ISSUE NO. 19

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back 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 Administrative Rules Bureau at (406) 444-2055.

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SPECIAL NOTICE AND TABLE SECTION

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 6.6.503, 6.6.504, 6.6.505, 6.6.506, 6.6.507, 6.6.507A, 6.6.507B, 6.6.507C, 6.6.508, 6.6.508A, 6.6.509, 6.6.510, 6.6.511, 6.6.517, 6.6.519, 6.6.521 and 6.6.522, pertaining to Medicare Supplements; ARM 6.6.607 pertaining to Medicare Select Full Coverage, and the proposed adoption of New Rule I pertaining to separability, and New Rule II pertaining to purpose	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On November 13, 2003, at 10:00 a.m., a public hearing will be held in the 2nd floor conference room, State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules pertaining to medicare supplements and medicare select full coverage, and the adoption of new rules pertaining to separability and purpose.

2. The State Auditor's Office 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 office no later than 5:00 p.m., November 6, 2003, to advise us as to the nature of the accommodation needed. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601; telephone (406) 444-2726; facsimile (406) 444-3497; or e-mail to dsautter@state.mt.us.

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

6.6.503 APPLICABILITY AND SCOPE (1) Except as otherwise specifically provided in ARM 6.6.507, 6.6.507C, 6.6.508, 6.6.509, 6.6.515 and 6.6.521, this subchapter shall apply to:

(a) ~~All~~ all medicare supplement policies delivered or issued for delivery in this state on or after February 1, 1982, the effective date of ~~hereof~~ this subchapter;~~,~~ and

(b) ~~All~~ all certificates issued under group medicare supplement policies which ~~certificates~~ have been delivered or issued for delivery in this state.

(2) remains the same.

AUTH: 33-1-313 and 33-22-904, MCA
IMP: 33-22-904, MCA

6.6.504 DEFINITIONS For purposes of this subchapter, the terms defined in 33-22-903, MCA, will have the same meaning in this subchapter unless clearly designated otherwise. The following definitions are in addition to those in 33-22-903, MCA.

(1) remains the same.

(2) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than 63 days. The 63-day period shall be counted as described in 33-22-141 and 33-22-142, MCA.

(3) through (3)(b) remain the same.

(c) ~~Part~~ part A or ~~Part~~ part B of Title XVIII of the Social Security Act (medicare);

(d) through (g) remain the same.

(h) ~~A~~ a health plan offered under chapter 89 of Title 5 ~~United States Code~~ USC (Federal Employees Health Benefits Program);

(i) through (7)(a) remain the same.

(b) ~~Coverage~~ coverage supplemental to the coverage provided under chapter 55 of Title 10~~,~~ USC; and

(c) through (9) remain the same.

(10) "Medicare+choice plan" means a plan of coverage for health benefits under medicare ~~Part~~ part C as defined in ~~section 1859 found in Title IV, subtitle A, chapter 1 of Public Law 105-33~~ 42 USC 1395w-28(b)(1), and includes:

(a) through (11) remain the same.

AUTH: 33-1-313~~,~~ and 33-22-904, MCA
IMP: 33-22-902 and 33-22-903, MCA

6.6.505 POLICY DEFINITIONS AND TERMS (1) No insurance policy or certificate may be advertised, solicited, or issued for delivery in this state as a medicare supplement policy or certificate unless the policy or certificate ~~if it~~ contains~~, as to matters set forth in (1) through (7) below,~~ definitions or terms which ~~do not~~ conform to the requirements of this rule and 33-22-903, MCA.

(2) The following definitions are in addition to those in 33-22-903, MCA~~.~~:

(1) remains the same, but is renumbered (a).

~~(a)~~(i) The definition may not be more restrictive than the following: "~~Injury~~ injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person that is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) remains the same, but is renumbered (ii).

(2) through (4) remain the same, but are renumbered (b)

through (d).

(e) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended."

~~(5)~~(f) "Medicare eligible expenses" means expenses of the kinds covered by medicare, to the extent recognized as reasonable by medicare.

(6) and (7) remain the same, but are renumbered (g) and (h).

AUTH: 33-1-313 and 33-22-904, MCA
IMP: 33-15-303, ~~and~~ 33-22-901, 33-22-902, 33-22-903, 33-22-904, 33-22-905, 33-22-906, 33-22-907, 33-22-908, 33-22-909, 33-22-910, 33-22-911, 33-22-921, 33-22-922, 33-22-923 and ~~through~~ 33-22-924, MCA

6.6.506 PROHIBITED POLICY PROVISIONS (1) through (3) remain the same.

AUTH: 33-1-313, ~~and~~ 33-22-904 and 33-22-905, MCA
IMP: 33-15-303, ~~and 33-22-901 through 33-22-914, MCA~~ 33-22-902, 33-22-904 and 33-22-905, MCA

6.6.507 MINIMUM BENEFIT STANDARDS (1) remains the same.

(a) The following standards are in addition to all other requirements of this rule and Title 33, chapter 22, part 9, MCA, Medicare Supplement Insurance Minimum Standards:

(i) a medicare supplement policy or certificate shall not exclude or limit benefits for a loss incurred more than six months from the effective date of coverage because it involves a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage;

(i) through (iv) remain the same, but are renumbered (ii) through (v).

(A) and (B) remain the same.

~~(v)~~(vi) If the medicare supplement policy is terminated by the group policyholder and is not replaced as provided under (1)(a)~~(vii)~~(viii) ~~hereof~~, the issuer must offer certificateholders an individual medicare supplement policy which (at the option of the certificateholder):

(A) and (B) remain the same.

(vi) remains the same, but is renumbered (vii).

(A) offer the certificateholder the conversion opportunity described in (1)(a)~~(v)~~(vi);~~,~~

(B) remains the same.

(vii) remains the same, but is renumbered (viii).

(A) remains the same, but is renumbered (2).

(viii) remains the same, but is renumbered (3).

(A) remains the same, but is renumbered (a).

(b) Each medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under 226(b) of the Social Security Act and is covered under a group health plan (as defined in 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of loss;

(c) ~~(B)~~ Reinstitution of ~~such~~ coverages as described in (3)(a) and (b); must~~:~~

(i) ~~(I) Must~~ not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) ~~(II) Must~~ provide for coverage which is substantially equivalent to coverage in effect before the date of suspension; and

(iii) ~~(III) Must~~ provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

~~(b)~~(4) Standards for basic ("core") benefits common to all benefit plans include the following:

(a) every ~~Every~~ issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other medicare supplement insurance benefit plans in addition to the basic "core" package, but not in lieu thereof:

(i) and (ii) remain the same.

(iii) ~~Upon~~ upon exhaustion of the medicare hospital inpatient coverage including the lifetime reserve days, coverage of the medicare ~~Part~~ part A eligible expenses for hospitalization paid at the diagnostic related group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for the balance;

(iv) and (v) remain the same.

~~(c)~~(b) The following additional benefits must be included in medicare supplement benefit plans "B" through "J" only as provided by ARM 6.6.507A:

(i) ~~Coverage~~ coverage for all of the medicare ~~Part~~ part A inpatient hospital deductible amount per benefit period~~.~~;

(ii) ~~Coverage~~ coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a medicare benefit period for posthospital skilled nursing facility care eligible under medicare ~~Part~~ part A~~.~~;

(iii) ~~Coverage~~ coverage for all of the medicare ~~Part~~ part B deductible amount per calendar year regardless of hospital confinement~~.~~;

(iv) ~~Coverage~~ coverage for 80% of the difference between the actual medicare ~~Part~~ part B charges as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved ~~Part~~ part B charge~~.~~;

(v) ~~Coverage~~ coverage for all of the difference between the actual medicare ~~Part~~ part B charge as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved ~~Part~~ part B charge~~.~~;

(vi) ~~Coverage~~ coverage for 50% of outpatient prescription drug charges, after a $250.00 calendar year deductible, to a maximum of $1,250.00 in benefits received by the insured per calendar year, to the extent not covered by medicare~~.~~;

(vii) ~~Coverage~~ coverage for 50% of outpatient prescription drug charges, after a $250.00 calendar year deductible to a maximum of $3,000.00 in benefits received by the insured per calendar year, to the extent not covered by medicare~~.~~;

(viii) ~~Coverage~~ coverage to the extent not covered by medicare for 80% of the billed charges for medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250.00, and a lifetime maximum benefit of $50,000.00. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset~~.~~; and

(ix) remains the same.

(A) ~~Some~~ an annual clinical preventive medical history and physical examination that may include tests and services from (4)(b)(ix)(B) and patient education to address preventive health care measure~~.~~;

(B) ~~Any~~ any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

(I) through (VIII) remain the same.

(C) ~~Reimbursement~~ reimbursement shall be for the actual charges up to 100% of the medicare-approved amount for each service, as if medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of $120.00 annually under this benefit. This benefit must not include payment for any procedure covered by medicare~~.~~;

(x) and (A) remain the same.

(I) ~~"Activities~~ "activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings~~.~~;

(II) ~~"Care~~ "care provider" means a duly qualified or

licensed home health aide/homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry~~.~~;

(III) ~~"Home"~~ "home" means any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence~~.~~; and

(IV) ~~"At-home~~ "at-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit~~.~~;

(B) through (C) remain the same.

(I) ~~No~~ no more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of medicare approved home health care visits under a medicare approved home care plan of treatment~~.~~;

(II) ~~The~~ the actual charges for each visit up to a maximum reimbursement of ~~(~~$40.00~~)~~ per visit~~.~~;

(III) ~~(~~$1,600.00~~)~~ per calendar year~~.~~;

(IV) ~~Seven~~ seven visits in any one week~~.~~;

(V) ~~Care~~ care furnished on a visiting basis in the insured's home~~.~~;

(VI) ~~Services~~ services provided by a care provider as defined in this ~~section.~~ rule;

(VII) ~~At-home~~ at-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded~~.~~; and

(VIII) ~~At-home~~ at-home recovery visits received during the period the insured is receiving medicare approved home care services or no more than eight weeks after the service date of the last medicare approved home health care visit~~.~~;

(D) through (E) remain the same.

AUTH: 33-1-313~~,~~ ~~and~~ 33-22-904~~,~~ and 33-22-905, MCA
IMP: 33-15-303~~,~~ ~~and 33-22-901 through 33-22-924~~ 33-22-902, 33-22-904 and 33-22-905, MCA

6.6.507A STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS

(1) through (4) remain the same.

(5) The following descriptions detail the ~~Make-up~~ contents of the standardized benefit plans A through J:

(a) Standardized medicare supplement benefit plan "A" must be limited to the basic ("core") benefits common to all benefit plans, as established in ARM 6.6.507~~(1)(b)~~(4).

(b) Standardized medicare supplement benefit plan "B" must include only the following:

(i) ~~The~~ the core benefit as established in ARM 6.6.507~~(1)(b)~~(4), plus the medicare ~~Part~~ part A deductible as established in ARM 6.6.507~~(1)(c)~~(4)(b)(i).

(c) Standardized medicare supplement benefit plan "C" must include only the following:

(i) ~~The~~ the core benefit, as established in ARM 6.6.507~~(1)(b),~~(4); plus

(ii) the medicare ~~Part~~ part A deductible, skilled nursing facility care, medicare ~~Part~~ part B deductible, and medically necessary emergency care in a foreign country as established in ARM 6.6.507~~(1)(c)~~(4)(b)(i), (ii), (iii), and (viii).

(d) Standardized medicare supplement benefit plan "D" must include only the following:

(i) ~~The~~ the core benefit, as established in ARM 6.6.507~~(1)(b),~~(4); plus

(ii) the medicare ~~Part~~ part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and the at-home recovery benefit as established in ARM 6.6.507~~(1)(c)~~(4)(b)(ii), (viii), and (x).

(e) Standardized medicare supplement benefit plan "E" must include only the following:

(i) ~~The~~ the core benefit as established in ARM 6.6.507~~(1)(b),~~(4); plus

(ii) the medicare ~~Part~~ part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and preventive medical care as defined in ARM 6.6.507~~(3)(1)(c)(i), (ii), (viii), and (ix)~~(4)(b).

(f) Standardized medicare supplement benefit plan "F" must include only the following:

(i) ~~The~~ the core benefit as established in ARM 6.6.507~~(1)(b),~~(4); plus

(ii) the medicare ~~Part~~ part A deductible, the skilled nursing facility care, the ~~Part~~ part B deductible, 100% of the medicare ~~Part~~ part B excess charges and medically necessary emergency care in a foreign country as established in ARM 6.6.507~~(1)(c)(i), (ii), (iii), (v), and (viii)~~(4)(b).

(g) Standardized medicare supplement benefit high deductible plan F shall include only the following:

(i) 100% of covered expenses following the payment of the annual high deductible plan F deductible. The covered expenses include:

(A) the core benefit as defined in ARM 6.6.507~~,~~; plus

(B) the medicare ~~Part~~ part A deductible, skilled nursing facility care, the medicare ~~Part~~ part B deductible, 100% of the medicare ~~Part~~ part B excess charges, and medically necessary emergency care in a foreign country as defined in ARM 6.6.507~~(1)(c)~~(4)(b)(i), (ii), (iii), (v), and (viii) ~~respectively.~~;

(ii) The annual high deductible plan F deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the medicare supplement plan F policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible plan F deductible shall be $1500.00 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the consumer price

index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.00.

(h) Standardized medicare supplement benefit plan "G" must include only the following:

(i) core benefit as established in ARM 6.6.507~~(1)(b),~~ (4); plus

(ii) the medicare ~~Part~~ part A deductible, the skilled nursing facility care, 80% of the medicare ~~Part~~ part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as established in ARM 6.6.507~~(1)(c)~~(4)(b)(i), (ii), (iv), (viii), and (x).

(i) Standardized medicare supplement benefit plan "H" must include only the following:

(i) ~~The~~ the core benefit as established in ARM 6.6.507~~(1)(b),~~(4); plus

(ii) the medicare ~~Part~~ part A deductible, the skilled nursing facility care, basic prescription drug benefit, and medically necessary emergency care in a foreign country as established in ARM 6.6.507~~(1)(c)~~(4)(b)(i), (ii), (vi), and (viii).

(j) Standardized medicare supplement benefit plan "I" must include only the following:

(i) ~~The~~ the core benefit as established in ARM 6.6.507~~(1)(b)~~(4); plus

(ii) the medicare ~~Part~~ part A deductible, the skilled nursing facility care, 100% of the medicare ~~Part~~ part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country, and at-home recovery benefit as established in ARM 6.6.507~~(1)(c)~~(4)(b)(i), (ii), (v), (vi), (viii), and (x).

(k) Standardized medicare supplement benefit plan "J" must include only the following:

(i) ~~The~~ the core benefit as established in ARM 6.6.507~~(1)(b),~~(4); plus

(ii) the medicare ~~Part~~ part A deductible, the skilled nursing facility care, medicare ~~Part~~ part B deductible, 100% of the medicare ~~Part~~ part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care, and at-home recovery benefit as established in ARM 6.6.507~~(1)(c)~~(4)(b)(i), (ii), (iii), (v), (vii), (viii), (ix), and (x).

(l) Standardized medicare supplement benefit high deductible plan J shall consist of only the following:

(i) 100% of covered expenses following the payment of the annual high deductible plan J deductible. The covered expenses include:

(A) the core benefit as defined in ARM 6.6.507~~,~~; plus

(B) the medicare ~~Part~~ part A deductible, skilled nursing facility care, medicare ~~Part~~ part B deductible, 100% of the medicare ~~Part~~ part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit, and at-home recovery benefit as defined in ARM

6.6.507~~(1)(c)~~(4)(b)(i), (ii), (iii), (v), (vii), (viii), (ix), and (x) ~~respectively.~~;

(ii) The annual high deductible plan J deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the medicare supplement plan J policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be $1500.00 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the consumer price index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.00.

AUTH: 33-1-313, 33-22-904 and 33-22-905, MCA
IMP: 33-22-902, 33-22-904 and 33-22-905, MCA

6.6.507B OPEN ENROLLMENT (1) No issuer shall deny or condition the issuance or effectiveness of any medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an application for a policy or certificate ~~that is~~ submitted prior to or during the six-month period beginning with the first day of the first month in which an individual (who is 65 years of age or older) first enrolled for benefits under medicare ~~Part~~ part B. Each medicare supplement policy or certificate currently available from an issuer must be made available to all applicants who qualify under this ~~subsection~~ rule without regard to age.

(2) through (4) remain the same.

AUTH: 33-1-313, 33-22-904 and 33-22-905, MCA
IMP: 33-22-902 and 33-22-904, MCA

6.6.507C GUARANTEED ISSUE FOR ELIGIBLE PERSONS (1) The following are general provisions relating to guaranteed issue ~~of medicare+choice plans.~~:

(a) Eligible persons are those individuals described in (2) who ~~apply to~~ enroll under the policy ~~not later than 63 days after the date of the termination of enrollment described in (2),~~ during the period specified in (3) and who submit evidence of the date of termination or disenrollment with the application for a medicare supplement policy.

(b) through (2)(a) remain the same.

(i) provides health benefits that supplement the benefits under medicare, and the plan terminates, or the plan ceases to provide some or all such supplemental health benefits to the individual; or

(ii) is primary to medicare and the plan terminates or the plan ceases to provide some or all health benefits to the individual because the individual leaves the plan;

(b) The individual is enrolled with a medicare+choice organization under a medicare+choice plan under ~~Part~~ part C of

medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a program of all-inclusive care for the elderly (PACE) provider under section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a medicare+choice plan:

(i) through (2)(c)(iii) remain the same.

(iv) An organization under a medicare select policy., and the enrollment ceases under the same circumstance that would permit discontinuance of an individual's election of coverage under (2)(b).

(d) The enrollment ceases under the same circumstance that would permit discontinuance of an individual's election of coverage under (2)(b).

(e) remains the same, but is renumbered (d).

(i) through (iv) remain the same.

(f)(e) The individual was enrolled under a medicare supplement policy and terminates enrollment and:

(i) subsequently enrolls, for the first time, with any medicare+choice organization under a medicare+choice plan under Part part C of medicare, any eligible organization under a contract under section 1876 of the Social Security Act (medicare risk or cost), any similar organization operating under demonstration project authority, any PACE provider under 1894 of the Social Security Act, an organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan), or a medicare select policy; and

(g)(ii) The the subsequent enrollment under (f) (2)(e) is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal Social Security Act).; or

(h)(f) The individual, upon first becoming enrolled in medicare Part part B for benefits at age 65 or older, enrolls in a medicare+choice plan under Part part C of medicare, or with a PACE provider under section 1894 of the Social Security Act, and disenrolls from the plan not later than 12 months after the effective date of enrollment.

(3) The following describes the guarantee issue time periods in the case of:

(a) an individual described in (2)(a), the guarantee issue period begins on the date the individual receives a notice of termination or cessation of some or all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of such a termination or cessation) and ends 63 days after the date of the applicable notice;

(b) an individual described in (2)(b), (c), (e) or (f) whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the

applicable coverage is terminated;

(c) an individual described in (2)(d)(i), the guarantee issue period begins on the earlier of:

(i) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other similar notice if any; and

(ii) the date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated;

(d) an individual described in (2)(b), (d)(ii), (d)(iii), (e) or (f) who disenrolls voluntarily, the guarantee issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date;

(e) an individual described in (2) but not described in the preceding provisions of the rule, the guarantee issue period begins on the effective dates of disenrollment and ends on the day that is 63 days after the effective date.

(4) The following describes the guarantee issue time periods for extended medicare supplement and medicare select access for interrupted trial periods in the case of:

(a) an individual described in (2)(e) (or deemed to be so described, pursuant to this subsection) whose enrollment with an organization or provider described in (2)(e)(i) is involuntarily terminated with the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in (2)(e);

(b) an individual described in (2)(f) (or deemed to be so described, pursuant to this subsection) whose enrollment with a plan or in a program described in (2)(f) is involuntarily terminated with the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in (2)(f); and

(c) for purposes of (2)(e) and (f), no enrollment of an individual with an organization or provider described in (2)(e)(i), or with the plan or in a program described in (2)(f), may be deemed to be an initial enrollment under this subsection after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

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

(a) ~~An~~ an eligible person defined in (2)(a), ~~(2)~~(b), or ~~(2)~~(c)~~, or (2)(d)~~ is entitled to the issuance of a medicare supplement policy with any level of benefits up to the level of the previous policy without underwriting. If such an eligible person chooses a medicare supplement policy with a higher level of benefits than the previous policy, the issuer may underwrite the new policy~~.~~;

(b) ~~An~~ an eligible person defined in (2)~~(e)~~(d) is entitled to the issuance of the same medicare supplement

policy in which the eligible person was most recently enrolled, if available from the same issuer, or, if not so available, a policy described in ~~(3)~~(5)(a)~~.~~; and

(c) ~~Section~~ subsections (2)(e) and (f) shall include any medicare supplement policy offered by any issuer.

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

(a) At the time of an event described in (2) ~~of this rule~~ because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this rule, and of the obligations of issuers of medicare supplement policies under (1). Such notice shall be communicated contemporaneously with the notification of termination.

(b) At the time of an event described in (2) ~~of this rule~~ because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis of the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this rule, and of the obligations of issuers of medicare supplement policies under (1). Such notice shall be communicated within 10 working days of the issuer receiving notification of disenrollment.

AUTH: 33-1-313, 33-22-904 and 33-22-905, MCA
IMP: 33-22-902, 33-22-904 and 33-22-905, MCA

6.6.508 LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM (1) A medicare supplement policy form or certificate form must:

(a) not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

(a) and (b) remain the same, but are renumbered (i) and (ii).

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

~~(3)~~(c) For purposes of this rule, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including print, broadcast, and electronic advertising) must be regarded as group policies~~.~~; and

(4) and (a) remain the same, but are renumbered (d) and (i).

~~(b)~~(ii) The appropriate loss ratio requirement from (1)~~(a) and (b)~~(a)(i) and (ii) when combined with actual experience beginning with June 21, 1996 to date; and

~~(c)~~(iii) The appropriate loss ratio requirement from (1)~~(a) and (b)~~(a)(i) and (ii) over the entire future period for which the rates are computed to provide coverage.

~~(6)~~(2) An issuer shall collect and file with the commissioner by May 31 of each year:

(a) the data contained in the reporting form contained in Appendix A of the NAIC Model Regulation To Implement The NAIC Medicare Supplement Insurance Minimum Standards Model Act, April ~~1995~~ 2001, for each type in a standard medicare supplement benefit plan. These forms may be obtained by writing to the Montana Insurance Commissioner, ~~P.O. Box 4009,~~ 840 Helena Avenue, Helena, Montana ~~59604-4009~~ 59601.

~~(7) If~~ (b) if, on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation must be done on a statewide basis for each type in a standard medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies within the reporting year shall be excluded~~.~~;

(c) for the purposes of this subsection, for policies or certificates issued prior to September 30, 1993, the issuer shall make the refund or credit calculation separately for all individual policies combined and all group policies combined for experience after the [effective date of this amendment]. The first report shall be due by May 31, 2005; and

(8) and (9) remain the same, but are renumbered (d) and (3).

~~(5)~~(a) As soon as practicable, but prior to the effective date of enhancements in medicare benefits, every issuer of medicare supplement policies or certificates in the state~~,~~ must file with the commissioner, in accordance with the applicable filing procedures of this state:

(a) remains the same, but is renumbered (i).

(ii) An issuer must make such premium adjustments as are necessary to produce ~~and~~ an expected loss ratio under such policy or certificate as will conform with minimum loss ratio standards for medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for such medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date or anniversary date.

~~(i)~~(iii) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this ~~section~~ rule; and~~.~~

(b) remains the same.

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

AUTH: 33-1-313, 33-22-904, and 33-22-906, MCA
IMP: 33-15-303, ~~33-22-901~~ 33-22-902~~,~~ and 33-22-906, MCA

6.6.508A FILING AND APPROVAL OF POLICIES AND CERTIFICATES AND PREMIUM RATES (1) through (3)(a)(iv) remain the same.

(b) For the purposes of this rule, a "type" means an individual policy~~,~~ ~~or~~ a group policy, an individual medicare select policy, or a group medicare select policy.

(4) through (4)(a) remain the same.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to (4)(a) shall not file for approval a new policy form or certificate form of the same type for the same standard medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

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

(ii) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest~~.~~; and

(iii) through (5)(a) remain the same.

AUTH: 33-1-313, 33-22-904, 33-22-905 and 33-22-906, MCA
IMP: 33-22-904 and 33-22-906, MCA

6.6.509 REQUIRED DISCLOSURE PROVISIONS (1) through (5) remain the same.

(6) Issuers of accident and sickness policies or certificates or subscriber contracts that provide hospital or medical expense coverage on an expense incurred or indemnity basis~~,~~ to persons eligible for medicare must provide to such applicants a medicare supplement "buyer's guide". This may be the pamphlet entitled "Guide to Health Insurance for People with Medicare~~",~~," developed jointly by the national association of insurance commissioners and the health care financing administration of the U.S. department of health and human services, or any reproduction or official revision of that pamphlet in a type size no smaller than 12 point type. The "buyer's guide" must conform to the language, format, type size, type proportional spacing, bold character, and line spaces as specified in Appendix C of the NAIC Model Regulation, which is incorporated by reference in ARM 6.6.519. Specimen copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., or subject to availability of supplies, from the Montana department of insurance. The guide is identified as Department of Health and Human Services/Health Care Financing Administration Form Number HCFA-02110.

(a) Delivery of the "buyer's guide" must be made whether or not such policies or certificates are advertised, solicited, or issued as medicare supplement policies or certificates as defined in this ~~regulation~~ rule. Except in the case of direct response issuers, delivery of the "buyer's guide" must be made to the applicant at the time of application and acknowledgment of receipt of the "buyer's guide" must be obtained by the issuer. Direct response issuers must deliver the "buyer's guide" to the applicant upon request but not later than at the time the policy is delivered.

(7) through (8) remain the same.

(a) If an outline of coverage is provided at the time of application and the medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany such policy or certificate when it is delivered and contain the following statement, in no less than 12 point bold type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(b) The outline of coverage provided to applicants consists of ~~four parts:~~ a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage must be in the language and format prescribed below in no less than 12 point type. All plans A-J shall be shown on the cover page, and the plan~~(s)~~ that are offered by the issuer must be prominently identified. Premium information for plans that are offered must be shown on the cover page or immediately following the cover page and must be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant must be illustrated.

(c) The following items must be included in the outline of coverage in the order prescribed below:

[COMPANY NAME]
Outline of Medicare Supplement Coverage-Cover Page:
Benefit Plan(s)____[insert letter(s) of plan(s) being offered]

Medicare supplement insurance can be sold in only ten standard plans plus two high deductible plans. This chart shows the benefits included in each plan. Every company must make available ~~Plan~~ plan ~~"A"~~. Some plans may not be available in your state.

Basic Benefits: Included in All Plans.
Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.
Medical Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses), or, in the case of hospital outpatient department services under a prospective payment system, applicable co-payments.
Blood: First three pints of blood each year.

A	B	C	D	E
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible		
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-Home Recovery	
				Preventive Care

F F*	G	H	I	J J*
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance
Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
Part B Deductible				Part B Deductible
Part B Excess (100%)	Part B Excess ~~(100%)~~(80%)		Part B Excess (100%)	Part B Excess (100%)
Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
	At-Home Recovery		At-Home Recovery	At-Home Recovery
		Basic Drugs ($1,250 Limit)	Basic Drugs ($1,250 Limit)	Extended Drugs ($3,000 Limit)
				Preventive Care

*Plans F and J also have an option called a high deductible plan F and a high deductible plan J. These high deductible plans pay the same or offer the same benefits as plans F and J after one has paid a calendar year ~~$1500~~ $1650 deductible. Benefits from high deductible plans F and J will not begin until out-of-pocket expenses are ~~$1500~~ $1650. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but ~~does~~ do not include, in plan J, the plan's separate prescription drug deductible or, in plans F and J, the plan's separate foreign travel emergency deductible.

(9) Any accident and sickness insurance policy or certificate, other than a medicare supplement policy; or a policy issued pursuant to a contract under ~~Section~~ section 1876 or ~~Section~~ section 1833 of the Federal Social Security Act (42 U~~.~~S~~.~~C~~.~~ Sec. 1395, et seq.), disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy or other policy identified in ARM 6.6.503(2) issued for delivery in this state to persons eligible for medicare by reason of age must be accompanied by a notice to the insureds under the policy that the policy is not a medicare supplement policy or certificate. The notice must either be printed on or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy or certificate delivered to insureds. The notice must be in no less than 12 point type and must contain the following language: "THIS (POLICY OF CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for medicare, review the Medicare Supplement Buyers Guide available from the company."

(10) remains the same.

AUTH: 33-1-313, 33-22-904, and 33-22-907, MCA
IMP: 33-15-303, ~~and 33-22-901 through 33-22-924~~ 33-22-902, 33-22-904, and 33-22-907, MCA

6.6.510 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE (1) remains the same.

(a) (STATEMENTS)

(1) You do not need more than one medicare supplement policy.

(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) You may be eligible for benefits under medicaid and may not need a medicare supplement policy.

(4) The benefits and premiums under your medicare supplement policy must be suspended if requested during your entitlement to benefits under medicaid for 24 months. You must request this suspension within 90 days of becoming

eligible for medicaid. Upon receipt of timely notice, the issuer must either return to the policyholder or certificateholder that portion of the premium attributable to the period of medicaid eligibility or provide coverage to the end of the term for which premiums were paid, at the option of the insured, subject to adjustment for paid claims. If you are no longer entitled to medicaid, your policy will be reinstated if requested within 90 days of losing medicaid eligibility.

(5) Counseling services may be available in your state to provide advice concerning your purchase of medicare supplement insurance and concerning medical assistance through the state medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

(b) (QUESTIONS)

To the best of your knowledge:

(1) Do you have another medicare supplement insurance policy or certificate in force (including health care service contract, health maintenance contract)?

(2) If the answer to (1) is yes, with which company?

(3) Do you have any other health insurance policies that provide benefits which this medicare supplement policy would duplicate?

(4) If the answer to (3) is yes, with which company?

(5) What kind of policy?

(6) If the answer to questions (1) or (3) is yes, do you intend to replace these medical or health policies with this policy (certificate)?

(7) Are you covered by the state medicaid program?

(a) As a Specified Low-Income Beneficiary (SLMB)?

(b) As a Qualified Medicare Beneficiary (QMB)?

(c) For other Medicaid medical benefits?

(2) through (5) remain the same.

(c) NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE

(Insurance Company's Name and Address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application) (information you have furnished), you intend to terminate existing Medicare supplement insurance and replace it with a policy to be issued by (Company Name) ~~Insurance Company~~. Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have.

Terminate your present policy only if, after due consideration, you find that purchase of this medicare supplement coverage is a wise decision.

STATE TO APPLICANT BY ISSUER, OR PRODUCER:

(I have reviewed ~~you~~ your current medical or health insurance coverage. The replacement of insurance involved in this transaction does not duplicate coverage, to the best of my knowledge. The replacement policy is being purchased for the following reason(s) (check one):

_____ Additional benefits.
_____ No change in benefits, but lower premiums.
_____ Fewer benefits and lower premiums.
_____ Other. (please specify)

(1) remains the same.

(2) State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy ~~as long as you have not allowed your policy to lapse for over 31 days~~.

(3) remains the same.

_____
(Signature of Producer or Other Representative)*

_____
[Typed Name and Address of Issuer or Producer]

The above "Notice to Applicant" was delivered to me on:

_____
(Date)

_____
(Applicant's Signature)

*Signature not required for direct response sales.

**Paragraphs (1) and (2) of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

AUTH: 33-1-313, 33-22-904 and 33-22-907, MCA
IMP: 33-15-303, ~~and 33-22-901 through 33-22-924,~~ 33-22-904, 33-22-907, 33-22-921, 33-22-922, 33-22-923 and 33-22-924, MCA

6.6.511 SAMPLE FORMS OUTLINING COVERAGE (1) remains the same.

(a) ~~Inpatient~~ inpatient hospital deductible = ~~$764.00;~~ $840.00;

(b) ~~Daily~~ daily coinsurance amount for the 61st through 90th days of hospitalization in a benefit period = ~~$191.00;~~ $210.00;

(c) ~~Daily~~ daily coinsurance amount for lifetime reserve days = ~~$382.00;~~ $420.00;

(d) ~~Daily~~ daily coinsurance amount for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period = ~~$95.50.~~ $105.00.

(2) through (2)(e) remain the same.

(f) PLAN E, MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD table remains the same.

PLAN E

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	AFTER YOU PAY ~~$1500~~ $1650 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO ~~$1500~~ $1650 DEDUCTIBLE,** YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$0
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES -- BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0

PLAN E, MEDICARE PLAN E - OTHER BENEFITS - NOT COVERED BY MEDICARE table remains the same.

(g) PLAN F or HIGH DEDUCTIBLE PLAN F

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.
**This high deductible plan pays the same or offers the same benefits as plan F after one has paid a calendar year ~~$1500~~ $1650 deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are ~~$1500~~ $1650. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY ~~$1500~~ $1650 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO ~~$1500~~ $1650 DEDUCTIBLE,** YOU PAY
HOSPITALIZATON* Semiprivate room and board, general nursing and misc~~ellaneous~~ services and supplies First 60 days	All but $[6.6.511(1)(a)]	$[6.6.511(1)(a) (Part A deductible)	$0
61st thru 90th day	All but $[6.6.511(1)(b)] a day	$[6.6.511(1)(b)] a day	$0
91st day and after: While using 60 lifetime reserve days	All but $[6.6.511(1)(c)] a day	$[6.6.511(a)(c)] a day	$0
Once lifetime reserve days are used: Additional 365 days	$0	100% Medicare eligible expenses	
Beyond the additional 365 days	$0	$0	All costs

SERVICES	MEDICARE PAYS	AFTER YOU PAY ~~$1500~~ $1650 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO ~~$1500~~ $1650 DEDUCTIBLE,** YOU PAY
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital	All approved amounts		
First 20 days		$0	$0
21st thru 100th day	All but $[6.6.511(1)(d)] ~~/~~ a day	Up to $[6.6.511(1)(d)] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN F or HIGH DEDUCTIBLE PLAN F

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.
**This high deductible plan pays the same or offers the same benefits as plan F after one has paid a calendar year ~~$1500~~ $1650 deductible. Benefits from the high deductible plan F will begin until out-of-pocket expenses are ~~$1500~~ $1650. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY ~~$1500~~ $1650 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO ~~$1500~~ $1650 DEDUCTIBLE,** YOU PAY
MEDICAL EXPENSES- IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (above Medicare approved amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All cost $100 (Part B deductible)	$0
Next $100 of Medicare approved amounts*	$0		$0
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PLAN F or HIGH DEDUCTIBLE PLAN F

PARTS A & B

SERVICES	MEDICARE PAYS	AFTER YOU PAY ~~$1500~~ $1650 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO ~~$1500~~ $1650 DEDUCTIBLE,** YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment First $100 of Medicare approved amounts*	$0	$100(Part B deductible)	$0
Remainder of Medicare approved amounts	80%	20%	$0

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

(2)(h) through (j) remain the same.

(k) PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.
**This high deductible plan pays the same or offers the same benefits as plan J after one has paid a calendar year ~~$1500~~ $1650 deductible. Benefits from the high deductible plan J will not begin until out-of-pocket expenses are ~~$1500~~ $1650. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY ~~$1500~~ $1650 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO ~~$1500~~ $1650 DEDUCTIBLE,** YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days	All but $[6.6.511(1)(a)]	$[6.6.511(1)(a)] (Part A deductible)	$0
61st thru 90th day	All but $[6.6.511(1)(b)] a day	$[6.6.511(1)(b)] a day	$0
91st day and after: While using 60 lifetime reserve days	All but $[6.6.511(1)(c)] a day	$[6.6.511(10(c)] a day	$0
Once lifetime reserve days are used: Additional 365 days	$0	100% of Medicare eligible expenses	$0
Beyond the additional 365 days	$0	$0	All costs

SERVICES	MEDICARE PAYS	AFTER YOU PAY ~~$1500~~ $1650 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO ~~$1500~~ $1650 DEDUCTIBLE,** YOU PAY
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $[6.6.511(1)(d)] ~~/~~ a day	Up to $[6.6.511(1)(d)] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.
**This high deductible plan pays the same or offers the same benefits as plan J after one has paid a calendar year ~~$1500~~ $1650 deductible. Benefits from the high deductible plan J will not begin until out-of-pocket expenses are ~~$1500~~ $1650. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY ~~$1500~~ $1650 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO ~~$1500~~ $1650 DEDUCTIBLE,** YOU PAY
MEDICAL EXPENSES-IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT Such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	$0	$0
BLOOD First 3 pints	$0	All costs $100 (Part B deductible	$0
Next $100 of Medicare approved amounts*	$0	20%	$0
Remainder of Medicare approved amounts	80%		$0
CLINICAL LABORATORY SERVICES - BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PLAN J or HIGH DEDUCTIBLE PLAN J

PARTS A & B

SERVICES	MEDICARE PAYS	AFTER YOU PAY ~~$1500~~ $1650 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO ~~$1500~~ $1650 DEDUCTIBLE,** YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
Benefit for each visit	$0	Actual charges to $40 a visit	Balance
Number of visits covered (Must be received within 8 weeks of last Medicare approved visit)	$0	Up to the number of Medicare approved visits, not to exceed 7 each week	
Calendar year maximum	$0	$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	AFTER YOU PAY ~~$1500~~ $1650 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO ~~$1500~~ $1650 DEDUCTIBLE,** YOU PAY
FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
EXTENDED OUTPATIENT PRESCRIPTION DRUGS - NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $6,000 each calendar year	$0	80%-$3,000 calendar year maximum benefit	50%
Over $6,000 each calendar year	$0	$0	All costs
***PREVENTIVE MEDICAL CARE BENEFIT-NOT COVERED BY MEDICARE Some annual physical and preventive tests and services such as: digital rectal exam, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All costs

***Medicare benefits are subject to change. Please consult the latest Guide to Health Insurance for People with Medicare.

AUTH: 33-1-313 and 33-22-904, MCA
IMP: 33-15-303, ~~and~~ 33-22-901, 33-22-902, 33-22-903, 33-22-904, 33-22-905, 33-22-906, 33-22-907, 33-22-908, 33-22-

909, 33-22-910, 33-22-911, 33-22-921, 33-22-922, 33-22-923 and ~~through~~ 33-22-924, MCA

6.6.517 PERMITTED COMPENSATION ARRANGEMENTS

(1) ~~Compensation must be based on a level commission schedule for no less than 5 years.~~ An issuer or other entity may provide commission or other compensation to a producer or other representative for the sale of a medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200% of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for no fewer than five renewal years.

(3) No issuer or other entity shall provide compensation to its producers or other representatives and no producer or other representative shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

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

AUTH: 33-1-313 and 33-22-904, MCA
IMP: 33-15-303, ~~and 33-22-901 through 33-22-924,~~ 33-22-902, 33-22-904 and 33-22-906, MCA

6.6.519 STANDARDS FOR MARKETING (1) through (1)(f) remain the same.

(g) Provide to the enrollee an appropriate disclosure statement~~(s)~~ if the enrollee has accident and sickness insurance. These statements must be identical to the disclosure statements in Appendix C of the NAIC Model Regulation To Implement The NAIC Medicare Supplement Insurance Minimum Standards Model Act, ~~June 1998~~ April 2001. These disclosure statements are hereby adopted and incorporated by reference. These disclosure statements may be obtained by writing to the Montana Insurance Commissioner, ~~P.O. Box 4009,~~ 840 Helena Avenue, Helena, Montana ~~59604-4009~~ 59601.

(2) through (2)(c) remain the same.

(3) The terms "medigap~~,~~" and "medicare wrap-around~~,~~" ~~and words of similar import~~ must not be used. The terms "medicare supplement" and "medicare select" and words of similar import must not be used unless the policy or certificate is issued in compliance with applicable administrative rules and statutes.

AUTH: 33-1-313, 33-18-235, and 33-22-904, MCA
IMP: 33-15-303, ~~33-18-235, and 33-22-901~~ 33-18-202, 33-18-204, 33-22-907, 33-22-908, 33-22-921, 33-22-922, 33-22-923 and ~~through~~ 33-22-924, MCA

6.6.521 REPORTING OF MULTIPLE POLICIES (1) On or

before March 1 of each year, every issuer shall report, on the form contained in Appendix B of the NAIC Model Regulation To Implement The NAIC Medicare Supplement Insurance Minimum Standards Model Act, ~~April 1995,~~ April 2001, information for every individual resident of this state for which the issuer has in force more than one medicare supplement insurance policy or certificate. This form is hereby adopted and incorporated by reference. This form may be obtained by writing to the Montana Insurance Commissioner, ~~P.O. Box 4009,~~ 840 Helena Avenue, Helena, Montana ~~59604-4009~~ 59601. The following information must be reported:

(a) through (2) remain the same.

AUTH: 33-1-313 and 33-22-904, MCA
IMP: 33-15-303 and ~~33-22-901~~ 33-22-904 and 33-22-907, ~~through 33-22-924,~~ MCA

6.6.522 PROHIBITION AGAINST PREEXISTING CONDITIONS, WAITING PERIODS, ELIMINATION PERIODS, AND PROBATIONARY PERIODS IN REPLACEMENT POLICIES OR CERTIFICATES (1) and (2) remain the same.

AUTH: 33-1-313 and 33-22-904, MCA
IMP: 33-15-903, ~~and 33-22-901~~ 33-22-902, 33-22-904, 33-22-921, 33-22-922, 33-22-923 and ~~through~~ 33-22-924, MCA

6.6.607 MEDICARE SELECT FULL COVERAGE (1) A medicare select policy or certificate ~~shall provide payment for full coverage under the policy for covered services that are not available through~~ must not restrict payment for covered services provided by non-network providers if:

(a) and (b) remain the same.

(2) A medicare select policy or certificate must provide payment for full coverage under the policy for covered services that are not available through network providers.

AUTH: 33-22-904 and 33-22-905, MCA
IMP: ~~33-22-901~~ 33-22-902, 33-22-903, 33-22-904, 33-22-921, 33-22-922, 33-22-923 and ~~through~~ 33-22-924, MCA

4. The proposed New Rules provide as follows:

NEW RULE I SEPARABILITY (1) If any provision of this subchapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected.

AUTH: 33-1-313, MCA
IMP: 33-22-902, MCA

NEW RULE II PURPOSE (1) The purpose of this subchapter is to:

(a) provide for the reasonable standardization of coverage and simplification of terms and benefits of medicare supplement policies;

(b) facilitate public understanding and comparison of such policies;

(c) eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and

(d) provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for medicare.

AUTH: 33-1-313, MCA
IMP: 33-22-902, MCA

5. REASONABLE NECESSITY STATEMENT: It is necessary to amend ARM 6.6.503, 6.6.504, 6.6.505, 6.6.506, 6.6.507, 6.6.507A, 6.6.507B, 6.6.507C, 6.6.508, 6.6.508A, 6.6.509, 6.6.510, 6.6.511, 6.6.517, 6.6.519, 6.6.521, 6.6.522, and 6.6.607, and adopt New Rules I and II in order to be in compliance with changes to the corresponding federal regulations pursuant to provisions of the Benefits Improvement and Protection Act of 2000 that are relevant to medicare supplement coverage.

6. 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 Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by facsimile (406) 444-3497, or by e-mail, addressed to dsautter@state.mt.us, and must be received no later than November 20, 2003.

7. Christina Goe has been designated to preside over and conduct the hearing.

8. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written requests may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by facsimile to (406) 444-3497, or e-mailed to dsautter@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

JOHN MORRISON, State Auditor
and Commissioner of Securities

By: /s/ Angela Huschka
Angela Huschka
Deputy Insurance Commissioner

By: /s/ Elizabeth L. Griffing
Elizabeth L. Griffing
Rule Reviewer

Certified to the Secretary of State on October 6, 2003.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of a new rule pertaining to the administration of the 2004-2005 Federal Community Development Block Grant (CDBG) Program	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 7, 2003, at 1:30 p.m., a public hearing will be held in Room 228 at the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the adoption of a new rule pertaining to the administration of the 2004-2005 Federal Community Development Block Grant (CDBG) Program.

2. The Department of Commerce 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 wish to request an accommodation, contact the Community Development Division no later than 5:00 p.m. on November 1, 2003, to advise the Division of the nature of the accommodation that you need. Please contact Gus Byrom, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2777; Montana Relay 1-800-253-4091; TDD (406) 841-2702; facsimile (406) 841-2771; e-mail to gbyrom@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2004-2005 CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program 2005 Application Guidelines for Housing and Public Facilities Projects, the Montana Community Development Block Grant Program 2004 Application Guidelines for Economic Development Projects, and the Montana Community Development Block Grant Program 2004-2005 Grant Administration Manual published by it as rules for the administration of the CDBG program.

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

(a) policies governing the program;
(b) requirements for applicants;
(c) procedures for evaluating applications;
(d) procedures for local project start up;
(e) environmental review of project activities;
(f) procurement of goods and services;
(g) financial management;

(h) protection of civil rights;
(i) fair labor standards;
(j) acquisition of property and relocation of persons displaced thereby;
(k) administrative considerations specific to public facilities, housing rehabilitation and community revitalization and economic development projects;
(l) project audits;
(m) public relations;
(n) project monitoring; and
(o) planning assistance.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523.

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to adopt this new rule because the federal regulations governing the state's administration of the 2004-2005 CDBG program and 90-1-103, MCA, require the Department to adopt rules to implement the program. Local government entities must have these application guidelines before the entities may apply to the Department for financial assistance under the CDBG program. The Application Guidelines describe the federal and state requirements with which local governments must comply in order to apply for CDBG funds. The Grant Administration Manual is primarily a restatement and explanation of existing federal and state statutory and regulatory requirements, as well as additional departmental requirements, with which local CDBG recipients must comply in administering their CDBG projects. The Manual includes sample forms and letters, checklists, and explanatory text to help local government officials comply with the variety of requirements that apply to economic development, housing, and public facility projects.

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 Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523, by facsimile to (406) 841-2771; or by e-mail to gbyrom@state.mt.us to be received no later than 5:00 p.m., November 14, 2003.

5. David C. Cole has been designated to preside over and conduct this hearing.

6. The Community Development Division maintains a list of interested persons who wish to receive notices of rulemaking actions relating to the CDBG program. Persons who wish to have their name added to this list may make a written request which includes the name and mailing address of the person to receive

notices and specifies that the person wishes to receive notices regarding all CDBG administrative rulemaking proceedings. The request may be mailed or delivered to the Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523 by facsimile to (406) 841-2771, or made by completing a request form at any rules hearing held by the agency.

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

COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

By: /s/ MARK A. SIMONICH
MARK A. SIMONICH, DIRECTOR
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State, October 6, 2003.

BEFORE THE GRANT REVIEW COMMITTEE
OF THE OFFICE OF ECONOMIC DEVELOPMENT
GOVERNOR'S OFFICE
STATE OF MONTANA

In the matter of the proposed adoption of NEW RULES I through VI, relating to the Primary Sector Business Workforce Training Act	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 12, 2003, at 10:00 a.m, a public hearing will be held in the State Capitol, Helena, Montana, Room 350, to consider the proposed adoption of New Rules I through VI relating to the Primary Sector Business Workforce Training Act.

2. The Office of Economic Development will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact the Office of Economic Development no later than 5:00 p.m., November 5, 2003, to advise us of the nature of the accommodation you need. Please contact Lynette Brown, Governor's Office of Economic Development, State Capitol, Helena, Montana 59620; telephone (406) 444-5630; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-3674; e-mail lybrown@state.mt.us.

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

NEW RULE I DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Company" means the business entity that is applying for a primary sector business workforce training grant.

(2) "Committee" means the loan review committee, also sometimes referred to as the grant review committee, established in 39-11-201, MCA.

(3) "Grant" means the workforce training grant made by the committee to a qualifying company.

(4) "Office of economic development" means the office of economic development established in 2-15-218, MCA.

(5) "Previously existing job" means a full-time job, or a substantially similar full-time job, which was part of a company's payroll in Montana during the three years immediately preceding the date of the commencement of the project. A job created after commencement of a project but prior to a grant award is not considered to be "previously existing" for the purposes of grant eligibility.

(6) "Project" means a company's plan to provide workforce training for workers to obtain the skills needed for new jobs to be created in Montana by the company.

(7) "Sales volume" means gross sales revenues.

AUTH: 39-11-201, MCA
IMP: 39-11-201, MCA

NEW RULE II GRANT APPLICATION PROCEDURE (1) A project commences on the date a preliminary Montana new jobs cooperative training agreement for the project is signed by the company and the office of economic development.

(2) Within 90 days from the effective date of a preliminary Montana new jobs cooperative training agreement, an application for a grant must be submitted by the company to the office of economic development.

(a) The office of economic development shall create a primary sector business new jobs training application designed for that purpose.

(b) The committee has the right to extend the 90 day application deadline, at its sole discretion.

(3) When an application for a grant is received by the office of economic development, it will be reviewed by office of economic development staff to determine whether the application has been completed by the company in accordance with the guidelines provided in [NEW RULE III].

(a) If an application is incomplete, the company will be notified. Once a completed application has been submitted, it will be forwarded to the committee for review.

(b) A completed application will be considered by the committee during its next scheduled meeting.

AUTH: 39-11-201, MCA
IMP: 39-11-201, MCA

NEW RULE III INCORPORATION BY REFERENCE OF RULES GOVERNING SUBMISSION AND REVIEW OF APPLICATIONS FOR GRANTS SUBMITTED TO COMMITTEE (1) The committee adopts and incorporates by reference the Montana Primary Sector Business New Jobs Training Program Application Guidelines dated 2003 published by it as rules governing the submission and review of applications under the program. A copy of the guidelines may be obtained from the Office of Economic Development, Governor's Office, P.O. Box 200801, Helena, MT 59620-0801.

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

(a) determining preliminary eligibility;

(b) executing a preliminary agreement;

(c) requirements for marking submitted materials as confidential and for protecting such information;

(d) submission of a formal grant application and required information;

(e) contract required prior to grant award;

(f) timing of grant award relative to employee hiring; and

(g) periodic audit and review requirements.

(3) Prior to a grant being awarded, the company

receiving the grant will be required to enter into a contract with the office of economic development. The contract will, at a minimum, specify the following:

(a) projected increase in number of employees and the company's annual payroll – current and projected – at the expansion site and for any other operations within the state of Montana. Employee information must include projections for:

(i) number of new positions – including estimated hours worked per week;

(ii) salary or wage per hour for each employee by year;

(iii) estimate of pre-expansion and post-expansion annual payroll; and

(iv) timetable for phase-in of new employees;

(b) description and monetary value of employee benefits for each position;

(c) schedule for completion of worker training and costs associated with that training;

(d) description and amount of required match funds to be provided by the company ($1 for every $3 of grant);

(e) a provision requiring the full amount of the grant to be reimbursed to the state of Montana in the event the company ceases operation within 12 months of the time of the grant award;

(f) a requirement for the company to repay any shortfall in personal income tax revenues to the state that are a result of the company failing to meet the number of jobs or wage levels to which the company committed in the contract; and

(g) a requirement for annual reporting to the office of economic development of jobs and wage levels for the company's Montana operations.

AUTH: 39-11-201, MCA
IMP: 39-11-201, 39-11-202, MCA

NEW RULE IV GRANT AWARD CRITERIA (1) The committee shall consider each of the elements identified in 39-11-202, MCA, in determining whether the company is eligible for a grant award.

(2) The committee shall use the grant application materials as its primary source of information in considering whether or not to award a grant to the company.

(3) The committee may require the company to present additional information, including but not limited to:

(a) a pre-award audit or survey of the company; and

(b) access to payroll or tax records as a condition for a grant award.

(4) The decision to award a grant to a company may be made by a simple majority of the members present, so long as there is a quorum.

(5) A grant for worker training may be given in its entirety to the company as soon as funds are available following the committee's approval of the grant. The committee may, at its discretion, disperse the granted monies

to the company in portions over time, depending on the length of the anticipated worker-training period.

(6) In calculating the wages for purposes of meeting the minimum wage criterion to qualify for a grant, the committee will:

(a) estimate the sum of total gross wages (including bonuses and commissions) and total value of benefits paid, during the succeeding 52-week period, commencing at the time of the actual grant dispersal; and

(b) divide the sum amount determined in (6)(a) by 52.

AUTH: 39-11-201, MCA
IMP: 39-11-201, 39-11-202, MCA

NEW RULE V AUDIT CRITERIA (1) The committee recognizes that it has an obligation on behalf of the citizens of Montana to ensure that a company that receives a grant complies with the terms of the grant award. In order to do that, the committee requires that each grant recipient provide semi-annually (every six months based on a schedule determined by the committee), at its own cost and expense, status of the project and the new jobs for which the grant was originally awarded. Information must include:

(a) number and total payroll of jobs the company maintains in Montana;

(b) number of jobs and wage rates (including salary, bonuses, commissions) of jobs at the site(s) of expansion or relocation for which the grant was made;

(c) status of training, by position, for which the grant was made including an accounting of training costs; and

(d) access to Montana department of revenue or department of labor and industry records including, but not limited to, unemployment insurance records, to verify employment and payroll data.

AUTH: 39-11-201, MCA
IMP: 39-11-201, 39-11-202, MCA

NEW RULE VI INCORPORATION BY REFERENCE OF RULES GOVERNING EMPLOYER WORKFORCE TRAINING CREDIT AS ADOPTED BY THE DEPARTMENT OF REVENUE (1) The committee adopts and incorporates by reference ARM Title 42, chapter 15, [SUBCHAPTER I] for employer workforce training credits as adopted by the department of revenue in 2003. A copy of these rules may be obtained from the Office of Economic Development, Governor's Office, P.O. Box 200801, Helena, MT 59620-0801.

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

(a) the certification process;

(b) verification of gross wages;

(c) transfer of funds to the office of economic development;

(d) determination of effective tax rates;

(e) definition of "gross wages;" and

(f) adoption by reference of the committee's rules and application guidelines.

AUTH: 39-11-201, MCA
IMP: 39-11-201, 39-11-202, MCA

REASON: There is reasonable necessity for the statutory Grant Review Committee to adopt rules in order to fully implement the express terms of the Primary Sector Business Workforce Training Act (House Bill 564, enrolled as Chapter 567, Laws of 2003) which requires the Committee to adopt rules to implement various provisions of the Act.

The Committee is unable to estimate the number of persons that will be affected by the proposed rules, because there is no information about how many companies will apply and be eligible for a grant. While grants will typically involve the creation of 10 or more new jobs, 39-11-202(5), MCA, gives the Committee discretion on awarding grants when fewer than 10 new jobs will be directly created by a company. However, the Committee expects that most, if not all, companies that successfully apply will be creating at least 10 new jobs. By law, the amount of the grant may not exceed $5,000 per new job created. The Committee notes that it has $10 million available for grants, and therefore it estimates (assuming that the maximum amount of grant money is requested and awarded) that not more than 2000 persons obtaining a newly created job will be directly affected. The Committee expects that there will be a ripple effect for each newly created job, and additional persons will therefore be affected indirectly by the grants that are awarded.

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 by mail to: Dave Gibson, Office of Economic Development, State Capitol, Helena, Montana 59620-0801, by facsimile to (406) 444-3674, or by e-mail to lybrown@state.mt.us, and must be received no later than 5:00 p.m., November 21, 2003.

5. The Governor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the Office of Economic Development and/or the Grant Review Committee. Persons who wish to have their name added to the list may make a written request that includes the name and mailing address of the person to receive notices and specifies topics the person wishes to receive notices regarding. Such written request may be mailed or delivered to the Office of Economic Development, State Capitol, Helena, Montana 59620-0801, by facsimile to (406) 444-3674, or by e-mail to lybrown@state.mt.us, or may be made by completing a request form at any rules hearing held by the Governor's Office.

6. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

7. Tom Beck, Governor's Chief Policy Advisor, has been designated to preside over and conduct this hearing.

GRANT REVIEW COMMITTEE

/s/ JAMES W. SANTORO
James W. Santoro
Governor's Chief Legal Counsel
Rule Reviewer

/s/ DAVE GIBSON
Dave Gibson, Chair of
Grant Review Committee

Certified to the Secretary of State: October 1, 2003

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.101, 17.56.121, 17.56.308, 17.56.309, 17.56.701 and 17.56.1001 and adoption of new rules I through III pertaining to underground storage tanks and the repeal of 17.56.221 pertaining to issuance of compliance tags and certificates	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION AND REPEAL (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On November 5, 2003, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in the Lewis Room of the Phoenix Building, 2209 Phoenix Avenue, Helena, Montana, to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The 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., October 27, 2003, to advise us of the nature of the accommodation that you need. Please contact Helenann Cannon, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-0479; fax (406) 444-1901; or email hcannon@state.mt.us.

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

17.56.101 DEFINITIONS For the purposes of this chapter and unless otherwise provided, the following terms have the meanings given to them in this rule and ~~must~~ shall be used in conjunction with those definitions in 75-11-503, MCA.

(1) and (2) remain the same.

(3) "Active tank" means, for the purpose of determining operating permit and compliance inspection requirements in subchapter 3 and closure requirements in subchapter 7, an underground storage tank that is being used, or is capable of being used, for dispensing, depositing or storing a regulated substance and is not inactive as defined in (31).

(3) through (29) remain the same, but are renumbered (4) through (30).

(31) "Inactive tank" means, for the purpose of determining operating permit and compliance inspection requirements in subchapter 3 and closure requirements in subchapter 7, an underground storage tank for which the department has received written notice, in accordance with ARM 17.56.701, that the tank is currently not being used for dispensing, depositing or

storing a regulated substance.

(30) through (67) remain the same, but are renumbered (32) through (69).

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-302, 75-11-319, 75-11-505, MCA

REASON: The proposed amendments to ARM 17.56.101 add definitions of "active" and "inactive" underground storage tanks (USTs). These definitions are necessary to implement House Bill (HB) 144 which amended 75-11-509, MCA.

Before the enactment of HB 144, 75-11-509, MCA, required owners and operators of all underground storage tanks to have their tanks inspected for compliance with the Montana Underground Storage Tank Act, 75-11-501, et seq., MCA, (the Act), by January 1, 2002, and once at least every three years thereafter. The compliance inspector had to certify in a report that the operation and maintenance of the tank complied with the Act before the Department could issue a permit to operate the tank.

HB 144 made the compliance inspection and operating permit requirements applicable only to owners and operators of active USTs. The proposed definition of "active tank" is necessary to describe the tanks that must be inspected for compliance with the Act before receiving an operating permit and tag. Under this proposed definition, compliance inspection and operating permit requirements apply only to tanks that are being used, or are capable of being used, for dispensing, depositing or storing regulated substances and are not inactive as defined in ARM 17.56.101(31).

HB 144 also amended 75-11-509, MCA, by requiring the owner or operator of an inactive UST to comply with Department requirements for testing, inspection, and recordkeeping, and by authorizing the Department to adopt "requirements for testing, inspection, recordkeeping, and reporting for inactive tanks to ensure that these tanks do not pose a threat to public health, safety or the environment while inactive or upon their return to active status." The proposed definition of "inactive tank" is necessary to include all tanks for which the Department has received notice that the tank is not being used for dispensing, depositing or storing regulated substances.

The compliance inspection and operating permit requirements will not apply to inactive tanks.

The proposed amendments require that the Department receive notice before a tank may be considered inactive. This amendment is necessary for the Department to accurately determine the status of USTs and ensure compliance with applicable regulations so that such tanks do not pose a threat to human health and the environment.

17.56.121 DETERMINATION OF ADMINISTRATIVE PENALTIES

(1) remains the same.

(2) For each violation, the department shall assess the maximum administrative penalty, and allow the time for

corrective action, specified in the table in this rule. Pursuant to 75-11-525(4), MCA, the department may suspend a portion of the maximum administrative penalty based on the cooperation and degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

VIOLATION	MAXIMUM PENALTY $	MINIMUM PENALTY $	VIOLATION CORRECTABLE	TIME ALLOWED FOR CORRECTION
(a) Failure to notify the department of an UST system	300	150	yes	10 days
(b) Failure to register an UST system	100	50	yes	10 days
(c) Failure to report a suspected or confirmed release/spill within 24 hours	500	500	no	not applicable
(d) Failure to investigate or respond to a release	500	250	yes	15 days
(e) Failure to temporarily or permanently close an UST system properly	500	250	yes	30 days
(f) Failure to properly install an UST system	500	250	yes	30 days
(g) Failure to install release detection or corrosion protection	500	250	yes	30 days
(h) Failure to provide spill/overfill prevention equipment	500	250	yes	15 days
(i) Failure to provide automatic line leak detection	500	250	yes	15 days
(j) Failure to install properly designed and constructed UST system components	300	150	yes	45 days

VIOLATION	MAXIMUM PENALTY $	MINIMUM PENALTY $	VIOLATION CORRECTABLE	TIME ALLOWED FOR CORRECTION
(k) Failure to perform release detection	300	150	yes	30 days
(l) Failure to provide financial assurance	300	150	yes	30 days
(m) Failure to maintain release detection or corrosion protection equipment	200	100	yes	30 days
(n) Failure to provide required records within 48 hours of notice	100	100	no	not applicable
(o) Failure to maintain required records	100	50	yes	30 days
(p) Failure to obtain a compliance inspection within the statutory time	500	250	no	not applicable
(q) Operating an UST without a valid operating permit	500	500	no	not applicable
(r) Failure to correct violations noted in a compliance inspection report within the time allowed by rule	500	250	yes	30 days
(s) Failure to obtain a follow-up inspection after correcting violations noted in a compliance inspection report	500	100	yes	10 days
(t) Failure to empty an UST that is not in compliance with rules related to release prevention and detection and corrosion protection in subchapters 2, 3 and 4	500	300	yes	15 days
(u) Failure to notify of change of ownership	500	250	yes	15 days

VIOLATION	MAXIMUM PENALTY $	MINIMUM PENALTY $	VIOLATION CORRECTABLE	TIME ALLOWED FOR CORRECTION
(v) Failure to file inspection report within 10 days of inspection	500	250	yes	10 days

(3) and (4) remain the same.

AUTH: 75-11-505, MCA
IMP: 75-11-505, 75-11-525, MCA

REASON: The Department proposes to amend ARM 17.56.121 to include specific administrative penalties for violations of: ARM 17.56.308(1), operation of an UST without a valid operating tag; ARM 17.56.309(7), failure to correct violations noted in a compliance inspection report within the time allowed by rule; ARM 17.56.309(8), failure to obtain a follow-up inspection after correcting violations noted in a compliance inspection report; and New Rule II, failure to empty an UST that is not in compliance with rules in subchapters 2, 3 and 4 related to release prevention and detection and corrosion protection. The current rules allow administrative enforcement of the aforementioned requirements, but do not identify specific penalty amounts. The proposed amendment is necessary to notify owners and operators of the administrative penalties associated with these violations.

17.56.308 OPERATING PERMIT REQUIRED ~~(1) Between September 30, 2002 and March 31, 2003, a person may not place a regulated substance in or dispense a regulated substance from an underground storage tank system unless the owner or operator has either:~~

~~(a) a current operating permit from the department issued pursuant to (3) or (8) and an operating tag issued pursuant to (7) indicating that the underground storage tank system is in compliance with Title 75, chapter 11, part 5, MCA, and the rules adopted thereunder; or~~

~~(b) a compliance plan that meets the requirements of ARM 17.56.309.~~

~~(2)~~ (1) After March 31, 2003, a person may not place a regulated substance in, ~~or~~ dispense a regulated substance from, or otherwise operate an underground storage tank system unless the owner or operator has a valid operating permit and an operating tag for the system.

~~(3)~~ (2) The department shall issue an operating permit when the owner or operator has filed with the department an inspection report signed by a licensed compliance inspector ~~that certifies~~ and the department determines, on the basis of the inspection report and other relevant information, that the operation and maintenance of the underground storage tank systems at that facility are in compliance with Title 75,

chapter 11, part 5, MCA, and the rules adopted thereunder on the date of the inspection.

(4) remains the same, but is renumbered (3).

~~(5) Upon receipt of a department-approved compliance plan, the department shall issue the owner or operator a provisional operating tag. The provisional operating tag must be visibly affixed to each tank's fill pipe or to another visible part of the tank if affixing the tag to the fill pipe is impracticable. All provisional operating tags expire on April 1, 2003.~~

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

~~(7)~~ (5) The department shall issue an operating tag for each underground storage tank for which the department has issued an operating permit as described in ~~(3)~~ (2) and ~~(6)~~ (4). The operating tag must be visibly affixed by the owner or operator to each tank's fill pipe or to another visible part of the tank if affixing the tag to the fill pipe is impracticable. If an operating permit expires or is revoked, the owner or operator must remove each operating tag and return it to the department within 30 days of receipt of expiration or revocation.

~~(8) For an underground storage tank system installed after December 31, 2001, the department shall issue a conditional operating permit and tag upon the submission of all required documentation related to the installation of that underground storage tank system as required by ARM 17.56.1305. A conditional operating permit and tag expire 90 days after issuance.~~

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

~~(10)~~ (7) Except as provided in ~~(11)~~ (8), the department shall suspend or revoke an operating permit and tag issued under this rule according to the provisions of 75-11-512, MCA.

(11) remains the same, but is renumbered (8).

~~(12) Owners and operators who have operating permits that were issued after a compliance inspection documenting violations in any of the operation and maintenance categories listed in ARM 17.56.309(1)(a) must, not later than September 30, 2002, have a compliance plan that meets the requirements of ARM 17.56.309.~~

AUTH: 75-11-505, 75-11-509, MCA
IMP: 75-11-509, MCA

REASON: The proposed amendments delete sections relating to compliance plans and provisional operating tags. Under 75-11-509, MCA, owners and operators of UST systems were required to obtain the first compliance inspection by January 1, 2001. For the first compliance inspection, the Department adopted administrative rules that allowed an owner or operator of USTs to continue to operate the UST systems for one year under the terms of a compliance plan if full compliance with the Montana Underground Storage Tank Act, at 75-11-501, et seq., MCA, (the Act), and the rules adopted thereunder, could not be achieved by the April 1, 2002, compliance deadline. Compliance plans and provisional operating tags were intended as an interim measure to assist owners and operators with meeting the first compliance

deadline. That deadline has passed and rules related to compliance plans and provisional operating tags are no longer necessary.

Under the current rule, placing a regulated substance in or dispensing a regulated substance from an UST without a valid operating permit is prohibited. The proposed amendment to (1) prohibits filling, dispensing from, or otherwise actively operating an UST without an operating permit and tags. The proposed amendment is necessary to make the rule consistent with the intent of the compliance inspection program, by requiring owners and operators of active USTs to obtain regular inspections that examine, assess and document compliance with tank operation and maintenance requirements.

The proposed amendment to (3) modifies the criteria for issuing operating permits based on statutory changes made in the 2003 legislative session (HB 144). The amendment clarifies that the Department has final authority to determine whether the facility is in compliance, and that the Department may consider both the inspection report and other relevant information. The amendment is necessary to avoid delegating to the inspector the final authority to determine compliance.

The proposed deletion of (5) and (8) moves all provisions pertaining to conditional operating permits and one-time fill permits to proposed New Rule I. This proposed amendment is necessary to reorganize the Department rules related to operating permits so that rules related to standard operating permits will remain in ARM 17.56.308 and rules related to short-term operating permits, issued under special circumstances, will all be in a separate rule, proposed herein as New Rule I. This reorganization of the Department rules will assist the public by making the rules related to operating permits easier to locate and apply to individual circumstances.

17.56.309 REQUIREMENTS FOR COMPLIANCE INSPECTIONS ~~AND COMPLIANCE PLANS~~ (1) The owner or operator of an underground storage tank system shall have all active underground storage tank systems at an individual facility inspected by a licensed compliance inspector, certified under this chapter, at least every three years for compliance with the operation and maintenance requirements of Title 75, chapter 11, part 5, MCA, and the rules adopted thereunder.

(a) through (1)(a)(iv) remain the same.

(b) ~~Except as provided in ARM 17.56.308(4), the department may not issue an operating permit under ARM 17.56.308 if an inspection indicates a violation in any of the operation and maintenance categories listed in (1)(a). The department may also initiate enforcement action to address such violations.~~ If the department determines that a tank is not in full compliance with the requirements in the operation and maintenance categories in (1)(a), the department may issue or renew an operating permit under ARM 17.56.308 only if the department requires, in a compliance order issued pursuant to 75-11-512 or 75-11-525, MCA, that the noncompliance be corrected at the earliest practicable time. The department may also take other

enforcement actions, and may pursue any other remedy available to the department, to address the noncompliance.

(c) The inspection may assess compliance with requirements in categories other than those listed in (1)(a). If ~~an inspection indicates~~ the department determines that there is a violation in a category other than those listed in (1)(a), the department may issue or renew an operating permit and may pursue enforcement action to address the violation. ~~The existence of violations outside the scope of (1)(a) does not preclude issuance of an operating permit under ARM 17.56.308.~~

(d) remains the same.

~~(2) For the first compliance inspection required by 75-11-509, MCA, a provisional operating tag may be issued, in accordance with ARM 17.56.308(5), where an inspection indicates one or more violations of past testing, monitoring, maintenance, recordkeeping or inspection deadlines that cannot be corrected by September 30, 2002. The owner or operator must sign and submit a compliance plan in accordance with ARM 17.56.309(8) and demonstrate compliance with all testing, monitoring, maintenance and recordkeeping deadlines that the department determines are appropriate during the compliance plan period.~~

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

~~(4)~~ (3) For an underground storage tank system that is installed or returned to active status pursuant to ARM 17.56.701 ~~on or~~ after November 1, 2001, an initial inspection must be completed at least 90 days, but no more than 120 days, after the date the conditional operating permit is issued. If the facility has other underground storage tank systems installed prior to November 1, 2001, all subsequent inspections of an underground storage tank system installed on or after November 1, 2001, must be conducted on the same schedule as the underground storage tank systems in existence prior to that date.

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

~~(6)~~ (5) No later than 10 days after any inspection conducted pursuant to this rule, the owner or operator, or the compliance inspector ~~or an underground storage tank system,~~ acting on behalf of the owner or operator, shall provide to the department the results of the compliance inspection on a form approved by the department. The form must be signed by the licensed compliance inspector and the underground storage tank system owner or operator.

~~(7)~~ (6) All underground storage tank systems at an individual facility, except as provided in ~~(3)~~ (2), must be inspected at one time.

(7) The owner or operator shall correct the violations noted in a compliance inspection report as follows:

(a) leak detection violations must be corrected within 60 days of receipt of the inspection report by the owner or operator; and

(b) all other violations must be corrected within 90 days of receipt of the inspection report by the owner or operator.

~~(8) Owners and operators unable to meet the September 30, 2002 deadline established in ARM 17.56.308(1), must sign and~~

~~submit a department-approved compliance plan, on a form provided by the department, by September 1, 2002. The compliance plan must:~~

~~(a) identify all violations noted on the inspection report that must be corrected;~~

~~(b) identify the action necessary to correct the violations;~~

~~(c) require that all actions necessary to correct the violations, a follow-up inspection and inspection report be completed and submitted to the department no later than March 1, 2003; and~~

~~(d) be signed by the owner or operator.~~

~~(9) The department may require, as part of a compliance plan required by (8), that an owner, operator or person responsible for the daily operation and maintenance of the facility's underground storage tank systems attend a department training session. The training sessions will address the requirements for operation and maintenance of underground storage tank systems under Title 75, chapter 11, part 5, MCA, and the rules adopted thereunder.~~

(8) The owner or operator shall obtain a follow-up inspection within 30 days of completion of the corrective actions required under (7)(a) and (b).

AUTH: 75-11-505, 75-11-509, MCA
IMP: 75-11-509, MCA

REASON: The proposed amendment to ARM 17.56.309(1) is necessary to implement amendments to 75-11-509, MCA, enacted by HB 144, which limit the compliance inspection requirements to active underground storage tanks. The existing rules required all tanks to comply with the compliance inspection requirements.

The proposed amendments to ARM 17.56.309 are necessary to delete sections relating to compliance plans. For the first compliance inspection which was required by January 1, 2002, the Department adopted administrative rules that allowed an owner or operator of USTs to continue to operate the UST systems for one year under the terms of a compliance plan if full compliance with the Act, and the rules adopted thereunder could not be achieved by the April 1, 2002, compliance deadline. Compliance plans were intended as an interim measure to assist owners and operators with meeting the first compliance deadline. That deadline has passed and rules related to compliance plans are no longer necessary.

The proposed amendments to (1)(b) will allow the Department to issue operating permits and tags when noncompliance with tank operation and maintenance requirements are being addressed under a compliance order issued pursuant to 75-11-512 or 75-11-525, MCA. This amendment makes the rule consistent with the amendments to 75-11-509, MCA, from HB 144. The amendments are necessary to allow for certain noncompliant facilities to continue operating while the noncompliance is being corrected pursuant to an administrative enforcement order.

The proposed amendments to (4) require an initial

inspection of UST systems, returned to active status on or after November 1, 2001, between 90 and 120 days after the conditional operating permit is issued. This amendment is necessary to parallel the initial inspection requirement for new tank installations and avoids creating a loophole whereby inactive tanks could return to active status without the inspection required of active tanks.

The proposed amendments to (5) are necessary to make the rule consistent with the statutory requirement, at 75-11-509(6), MCA, that the owner or operator submit a copy of the compliance inspection report to the Department. The current rules require the compliance inspector to provide the results of the inspection to the Department. As proposed, the rule states that the owner or operator, or the compliance inspector acting on behalf of the owner or operator, shall provide the results of the compliance inspection to the Department.

The proposed new (7) adds timeframes by which corrective actions to address violations noted in the compliance inspection report must be complete. The proposed new (8) adopts requirements for follow-up inspections after completion of required corrective actions and adopts timing requirements for submission of follow-up inspection reports to the Department. These timeframes will inform owners and operators of when violations, discovered during the compliance inspection, must be corrected. The timeframes proposed by these rule amendments are also necessary to carry out the purpose of the compliance inspection program, which is to ensure that USTs in active operation comply with all operation and maintenance requirements of the Act and the rules adopted thereunder. The timeframes proposed by these amendments are based on recommendations by the UST compliance inspection task force, which consisted of licensed compliance inspectors, local and tribal governments, owners and operators, petroleum marketers, and other interested parties. The proposed timeframes require timely action so that risks to human health and the environment are minimized, yet owners and operators will have a reasonable amount of time in which to address violations.

17.56.701 ~~TEMPORARY CLOSURE~~ INACTIVE UST SYSTEMS

(1) When the status of an active UST system is ~~temporarily closed~~ changed to inactive, owners and operators ~~must~~ shall notify the department, in writing, within 10 days after the date the UST ceases to be used for dispensing, depositing or storing regulated substances, shall continue operation and maintenance of corrosion protection in accordance with ARM 17.56.302, and shall continue operation and maintenance of any release detection in accordance with subchapter 4. Subchapters 5 and 6 must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (~~1~~ one inch) of residue, or 0.3% by weight of the total capacity of the UST system, remains in the system.

(2) When an UST system is ~~temporarily closed~~ inactive for ~~3~~ three months or more, owners and operators ~~must~~ shall also ~~comply with the following requirements~~:

(a) through (c) remain the same.

(3) ~~When an~~ UST system components ~~is temporarily closed for more than 12 months~~ that do not meet the corrosion protection requirements of ARM 17.56.201 or 17.56.202~~, owners and operators~~ must be permanently ~~close~~ closed ~~the UST system~~ in accordance with ARM 17.56.702 through 17.56.705. ~~Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with ARM 17.56.702 through 17.56.705. Owners and operators must complete a site assessment in accordance with ARM 17.56.703 before any extension under ARM 17.56.105 can be applied for.~~

~~(4) In addition to complying with all other applicable UST operation and maintenance requirements, an owner or operator shall comply with the following requirements prior to resuming active operation of an inactive UST system:~~

~~(a) In order to resume active operation of any inactive UST, the owner or operator must:~~

~~(i) provide the department with 30 days notice, in writing, of the owner or operator's intent to change the operational status of the UST;~~

~~(ii) perform and maintain release detection on the tank and piping in accordance with 17.56.407 and 17.56.408; and~~

~~(iii) perform and maintain corrosion protection in accordance with 17.56.302.~~

~~(b) In order to resume active operation of a UST that has a valid operating permit and has been out of service for 12 months or more, the owner or operator must:~~

~~(i) comply with (a)(i) through (iii); and~~

~~(ii) perform a precision tank tightness test, line tightness tests, and functionality tests of all mechanical and electronic release detection equipment, and submit all test results to the department. The UST may return to active operational status upon the department's satisfaction with the results of the aforementioned tests. All tests must be conducted in accordance with accepted industry standards and meet the performance requirements in ARM 17.56.407 and 17.56.408.~~

~~(c) In order to resume active operation of a UST that does not have a valid operating permit, the owner or operator must:~~

~~(i) comply with (a)(i) through (iii) and (b)(ii) above; and~~

~~(ii) comply with the operating permit and compliance inspection requirements at ARM 17.56.308 and 17.56.309.~~

~~(5) Some or all of the testing requirements in this rule may be waived in accordance with ARM 17.56.105 if the department determines that such waiver will not result in an increased threat to public health, welfare, safety and the environment.~~

(4) In order to return an inactive UST to active status, owners and operators, in addition to complying with all applicable UST requirements under this subchapter, shall:

(a) when an UST has a valid operating permit and is

inactive for 12 months or less, provide the department with 30 days advance written notice of the owner or operator's intent to return the UST to active status;

(b) when an UST has a valid operating permit and is inactive for more than 12 months:

(i) provide the department with 30 days advance written notice of the owner or operator's intent to return the UST to active status; and

(ii) perform a precision tank tightness test, line tightness tests and functionality tests of all mechanical and electronic release detection equipment, and submit all test results to the department. The owner and operator may return the UST to active status only upon receipt of notice from the department indicating that the test results are satisfactory. All tests must be conducted in accordance with accepted industry standards and must meet the performance requirements in ARM 17.56.407 and 17.56.408;

(c) when an UST does not have a valid operating permit, but no more than 12 months have passed since the expiration date of the last operating permit issued for the UST:

(i) provide the department with advance written notice as required in (4)(b)(i); and

(ii) obtain a conditional operating permit in accordance with [New Rule I] and a compliance inspection in accordance with ARM 17.56.309;

(d) when an UST does not have a valid operating permit, and more than 12 months have passed since the expiration date of the last operating permit issued for the UST:

(i) provide the department with advance written notice as required in (4)(b)(i);

(ii) perform a precision tank tightness test, line tightness tests and functionality tests of all mechanical and electronic release detection equipment, and submit test results to the department. The owner and operator may return the UST to active status only upon receipt of notice from the department indicating that the test results are satisfactory. All tests must be conducted in accordance with accepted industry standards and must meet the performance requirements in ARM 17.56.407 and 17.56.408; and

(iii) obtain a conditional operating permit in accordance with [New Rule I] and a compliance inspection in accordance with ARM 17.56.309;

(e) when an UST does not have a valid operating permit, continuous operation and maintenance of corrosion protection in accordance with ARM 17.56.302 cannot be demonstrated, and more than three years have passed since the expiration date of the last operating permit issued for the UST:

(i) meet all the requirements in (4)(d)(i) through (4)(d)(iii); and

(ii) show that the UST is structurally sound based upon an internal inspection.

AUTH: ~~75-10-405~~ 75-11-505, 75-11-509, MCA
IMP: ~~75-10-405~~ 75-11-505, 75-11-509, MCA

REASON: The proposed amendments replace the term "temporarily closed" with the term "inactive" to describe UST systems that have been taken out of use. "Inactive" is the term used in HB 144, amending 75-11-509, MCA, to describe tanks that do not need to obtain operating permits, but must meet requirements for testing, inspection, recordkeeping and reporting provided in Department rules. It is necessary to amend the Department's rules to reflect the terminology of the statute.

The proposed amendments also require written notification to the Department that an UST has been taken out of use. Without this notice requirement, the Department must assess the status of an UST to determine whether or not the tank is being actively used. This proposed written notice requirement is necessary to assist the Department with making accurate determinations of the operational status of USTs and to ensure compliance with applicable regulations.

The proposed amendments require closure of substandard tanks after 12 or more months in temporary closure. Substandard tanks are those that do not meet the performance standards in ARM 17.56.201 or 17.56.202. Existing UST systems were required to upgrade to meet the corrosion protection requirements in ARM 17.56.202 by December 22, 1998. Newly installed tanks must meet the corrosion protection requirements in ARM 17.56.201. Most UST systems should meet either the installation or upgrade standards in ARM 17.56.201 or 17.56.202. However, the proposed amendment is necessary to ensure that any UST components that do not currently meet these corrosion protection standards are permanently closed.

The proposed amendments also eliminate the unnecessary reference in ARM 17.56.701 to the procedures in ARM 17.56.105 for extending the time periods imposed in the rule related to closure of inactive tanks. This proposed amendment will not eliminate the availability of the variance rule, at ARM 17.56.105. A tank owner or operator may still request a variance from any requirement or procedure, including extension of the time periods in ARM 17.56.701, if warranted.

The proposed amendment adding (4) to ARM 17.56.701 implements the HB 144 amendments to 75-11-509, MCA, by providing procedures for returning inactive USTs to active status. The proposed process for returning an inactive UST to active status depends upon whether the UST has a valid operating permit, how long the tank has been inactive, how long since the expiration date of the last valid operating permit and, if it has been more than three years from the expiration date of the last operating permit for an inactive UST, whether or not corrosion protection has been continually operated and maintained for the system. The process for returning any of the aforementioned categories of inactive USTs to active status includes some, or all, of the following: 1) written advance notice to the Department of the owner or operator's intent to return the UST to active status; 2) testing to determine the functionality of release detection equipment; and 3) if the tank does not have a valid operating

permit, a conditional operating permit and a compliance inspection must be obtained in accordance with [New Rule I] and ARM 17.56.309. If an inactive UST does not meet the corrosion protection requirements in ARM 17.56.302, and it has been more than three years since the expiration date of the last operating permit issued for the UST, the tank must meet all notice and testing requirements in the rule and an internal inspection of the tank must show the tank to be structurally sound. The internal inspection requirement is necessary because corrosion may have occurred and there is no other procedure that would adequately measure its presence. The proposed amendments are necessary to implement procedures, in accordance with 75-11-509, MCA, as amended by HB 144, for returning inactive USTs to active status and to ensure that the changed status will not result in increased risk to human health and the environment.

17.56.1001 TANK FEE SCHEDULE (1) remains the same.

(2) Owners or operators of the following underground storage tanks shall pay the following annual registration fees in accordance with (1) ~~of this rule~~ before the department will issue a tank certificate under (3) ~~of this rule~~:

(a) underground storage tanks with a capacity of more than 1,100 gallons, ~~$70.00~~ $108 per tank;

(b) underground storage tanks with a capacity of 1,100 gallons or less, ~~$20.00~~ $36 per tank.

(3) The annual tank registration fees in (2) apply to annual tank registration fees that are due on or after January 1, 2004.

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

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The proposed amendments to ARM 17.56.1001 effectuate the legislative intent of HB 144 to raise annual tank registration fees to a level that will cover the current costs of the Department's UST program. Annual tank registration fees were set at the maximum amount allowed by 75-11-505, MCA, which was $70 for each UST over 1,100 gallons and $20 for each UST 1,100 gallons or less. This fee amount is no longer adequate to fund the Department UST program. In the past, grant awards from the EPA and budget savings, due to reduced staffing within the Department, have helped supplement the UST program budget. However, the grant awards from EPA have not kept pace with inflation and, at full staffing and without a fee increase, the program is expected to run out of funding sometime in 2005. If the current funding levels are maintained to support the existing program, the UST program is estimated to have a deficit of $275,000 by 2006. HB 144, enacted on March 31, 2003, amended 75-11-505, MCA, by, among other things, raising the cap on the tank registration fee amounts the Department may assess annually for each active UST. Under 75-11-505(6), MCA, as amended by HB 144, the Department may assess an amount not to exceed $108 annually for each tank over 1,100 gallons and an amount not to

exceed $36 annually for each tank 1,100 gallons or less. It is necessary to raise annual tank registration fees to the maximum amount allowed under 75-11-505, MCA, as amended by HB 144, in order to fully fund the Department's UST program. It is necessary to fully fund the Department UST program to continue UST program administration of UST licensing, permitting, inspection and enforcement of UST statutory and regulatory requirements. The UST program is also necessary to provide education and outreach services to UST owners and operators. With the proposed fee increase, the UST program expects its costs to be covered until 2007. The proposed amendments also include an applicability section applying the proposed tank fee increases to all annual tank registration fees due on or after January 1, 2004. The amendment is necessary to clarify when the fees are going into effect.

The cumulative amount for all persons affected by these proposed tank registration fee increases is estimated at $147,476 annually. This amount is based on annual payment of tank registration fees by a total of 823 tank owners to register 3,766 tanks with capacity of more than 1,100 gallons and 273 tanks with capacity of 1,100 gallons or less.

4. The proposed new rules provide as follows:

NEW RULE I CONDITIONAL, ONE-TIME FILL AND EMERGENCY OPERATING PERMITS (1) For an underground storage tank system installed after December 31, 2001, the department shall issue a conditional operating permit and tag upon the submission of all documentation required by ARM 17.56.1305, related to the installation of that underground storage tank system.

(2) The department may issue a conditional operating permit when an UST system does not have an operating permit and active operation is to be resumed after the UST system has been out of use. A conditional operating permit may be issued upon the department's receipt of the test results or written notice required in ARM 17.56.701.

(3) A conditional operating permit and tag issued under (1) or (2) expires 180 days after issuance.

(4) Notwithstanding issuance of a conditional operating permit, the department may pursue any enforcement measures available under Title 75, chapter 11, part 5, MCA, to address UST violations.

(5) The department may issue a one-time fill permit for the following purposes:

(a) testing related to installation of a new UST system. The department may issue the fill permit concurrently with an installation permit issued pursuant to subchapter 13; or

(b) testing related to returning an inactive UST system to active status. The department may issue the fill permit upon receipt of written notice, in accordance with ARM 17.56.701, that the UST will return to active operational status.

(6) The department may issue an emergency operating permit to allow operation of an UST without a valid operating permit and tag when operation of the UST is necessary to protect the

safety and welfare of persons, property or national security from imminent harm or threat of harm.

(a) Before issuing an emergency operating permit, the department shall determine that:

(i) under all the circumstances, any potential impacts to human health and the environment arising from operation of the UST are outweighed by the interest in preserving health, safety or welfare of persons, property or national security; and

(ii) the owner or operator has no other available alternative to avoid the imminent harm or threat of harm.

(b) Emergency permits expire when the emergency is abated or 90 days after issuance of the permit, whichever time period is shorter.

(c) Notwithstanding issuance of an emergency permit, the department may pursue any enforcement measures available under Title 75, chapter 11, part 5, MCA, to address UST violations.

(d) In order to reduce the risk of a release, any emergency operating permit issued by the department under this rule may be subject to conditions or procedures that the department determines are necessary to minimize risks to human health or to the environment.

AUTH: 75-11-505, 75-11-509, MCA
IMP: 75-11-509, MCA

REASON: New Rule I is proposed to place all provisions pertaining to conditional operating permits, one-time fill permits and emergency permits in one rule. Adoption of New Rule I is necessary to better organize the Department rules related to operating permits so that rules related to standard operating permits will remain in ARM 17.56.308 and rules related to operating permits issued under special circumstances will be included in New Rule I. This will assist the public in locating and applying the Department's UST rules.

Proposed (1) and (3) of New Rule I will include sections previously in ARM 17.56.308 related to conditional operating permits for newly installed tanks. Conditional operating permits and tags are issued by the Department upon receipt of the certification of compliance, submitted by the licensed installer or Department inspector upon completion of all work and testing performed in accordance with an installation permit. The conditional operating permit is valid for 180 days.

Proposed (2) of New Rule I allows issuance of a conditional operating permit to owners or operators of UST systems when the UST system does not have a valid operating permit and active operation will be resumed after the UST system has been out of use. Under this proposed new rule, the Department may issue a conditional operating permit for an UST that is being returned to active status upon receipt of current and passing results of required tests or written notice under ARM 17.56.701. A conditional operating permit is valid for 180 days. The amendment is necessary to allow for completion of tests to bring a tank back into active status after being out of use.

Proposed (4) is necessary to clarify that conditional

operating permits do not suspend ongoing operation and maintenance requirements for active tanks. Inactive status and the conditional operating permit process do not wipe the slate clean of past or present tank violations. Adoption of (4) is necessary to uphold the purpose of the compliance inspection and operating permit program and to ensure that active tanks are operated in compliance with the Act and rules adopted thereunder.

Proposed (5)(a) of New Rule I will include the one-time fill permit rule for newly installed tanks from ARM 17.56.221. ARM 17.56.221 is proposed for repeal in its entirety by this notice. It is necessary to retain the rule allowing one-time fill permits for new tank installations in order to remedy the dilemma created when an owner, operator, or installer needs to fill an UST in order to finalize installation, but the UST does not yet have an operating permit and tag. The one-time fill permit will be issued with an installation permit.

Proposed (5)(b) is necessary to allow a one-time fill permit for completion of testing related to returning an inactive UST to active status. Like newly installed tanks, an inactive tank returning to active status must be filled to complete required testing, despite the lack of an operating permit and tag for the UST system. The one-time fill permit, allowing testing necessary to return an inactive tank to active status, will be issued upon receipt of written notice, required under the proposed amendments to ARM 17.56.701, that the inactive UST will return to active status.

Proposed (6) allows the Department to issue a short-term emergency operating permit for an UST when necessary to avoid an imminent threat to the safety and welfare of persons, property, or national security. Examples of situations in which issuance of an emergency operating permit may be justified include: (1) to allow continuation of fire-fighting efforts; (2) for emergency response purposes; and (3) for emergency heat and power generation.

NEW RULE II REQUIREMENT TO EMPTY NONCOMPLIANT USTS

(1) The department may require an owner or operator to immediately empty an UST system upon a finding that the UST system is not in compliance with any of the requirements in ARM Title 17, chapter 56, subchapters 2, 3, 4 or 7 and that allowing the contents to remain in the UST system poses a risk to public health or the environment.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: New Rule II is proposed to allow the Department to require owners and operators to immediately empty any UST that is not being operated and maintained in compliance with rules in ARM Title 17, chapter 56, subchapters 2, 3, 4 or 7. Adoption of New Rule II is necessary to promptly remedy and prevent threats to human health or the environment arising from potential releases of petroleum products and regulated substances from

USTs that are not operated and maintained in compliance with the designated rules. The rules are designed to prevent releases from underground storage tanks. Tanks that are not being operated and maintained in compliance with the rules present an increased threat of releasing regulated substances to the environment and should, therefore, be emptied.

NEW RULE III CHANGE IN OWNERSHIP (1) The purchaser and seller of an UST system shall each provide written notification to the department within 30 days after any sale. Such notification must be made by both parties signing and submitting a form provided by the department.

(2) The purchaser shall also provide the information required by ARM 17.56.902(7).

(3) Until notification of a new owner, or other responsible party, has been received by the department in accordance with this rule, annual tank registration fees will continue to be assessed to the owner, or other responsible party, of record with the department.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: Proposed New Rule III(1) and (2) require sellers and purchasers of USTs to notify the Department within 30 days after a sale of the change in ownership and of any other change in information submitted in the notification of underground storage tanks form as a result of the sale. This rule is necessary for the Department to maintain accurate information about current ownership and management of UST facilities. Although ARM 17.56.902 requires owners and operators of UST systems to notify the Department of any changed information submitted in the notification, including changes in ownership of the tanks, it is not clear that the seller and purchaser of an UST must notify the Department of the sale. Also, there is no deadline in ARM 17.56.902 for the UST owner or operator to submit updated ownership and other information to the Department. The proposed new rule will clarify the notification obligations of the seller and purchaser of an UST and impose a 30-day deadline by which the Department must receive notice of the change in UST ownership. The Department must have accurate information as to the ownership of USTs in order to administer and enforce its UST program. The proposed new rule is necessary to provide more accurate information as to tank ownership.

Proposed New Rule III(3) makes annual tank registration fees the responsibility of the owner of record with the Department until the Department is provided notice of new ownership of the USTs. This rule is necessary to provide incentive to sellers of USTs to promptly and properly notify the Department of new tank ownership after a sale. This proposed rule is also necessary to provide the Department with more accurate tank ownership information.

5. ARM 17.56.221 (Auth: 75-11-505, MCA; IMP: 75-11-505,

MCA), which is located at page 17-6071 of the Administrative Rules of Montana is proposed for repeal because the compliance certificate and tag program has been superseded by the compliance inspection and operating permit and tag program. The compliance certificate and tag showed that the 1998 UST upgrade requirements had been met. The compliance inspection and operating permit program includes verification that an UST meets these upgrade standards. Therefore, the compliance certificate and tag has become unnecessary. The one-time permit to fill an UST for the purpose of completing testing related to installation has been moved to ARM 17.56.308.

6. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Kirsten Bowers, Remediation Division, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; by fax (406) 444-1902; or by email to kbowers@state.mt.us, no later than November 13, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. Kirsten Bowers, attorney, has been designated to preside over and conduct the hearing.

8. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name 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 supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to ejohnson@state.mt.us or may be made by completing a request form at any rules hearing held by the Department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

James M. Madden BY: *Jan P. Sensibaugh*
JAMES M. MADDEN JAN P. SENSIBAUGH, Director
Rule Reviewer

Certified to the Secretary of State, October 6, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.1213 pertaining to requirements for air quality operating permit content relating to compliance	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On November 5, 2003, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Department of Environmental Quality, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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 the Board no later than 5:00 p.m., October 27, 2003, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

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

17.8.1213 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO COMPLIANCE (1) through (6)(b) remain the same.

(7) Each permit shall contain requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include the following:

(a) and (b) remain the same.

(c) A requirement that the compliance certification include the following:

(i) remains the same.

(ii) the identification of the method(s) or other means used by the owner or operator for determining the status of compliance with each term and condition during the certification period~~, and whether such methods or other means provide continuous or intermittent data~~. Such methods and other means include, at a minimum, the methods and means required under ARM 17.8.1212~~. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the FCAA, which prohibits knowingly making a false certification or omitting material information~~;

(iii) the status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period

was continuous or intermittent. The certification shall be based on the method or means designated in (7)(c)(ii) ~~above~~. The certification must identify each deviation and take it into account in the compliance certification. The certification must also identify as possible exceptions to compliance any periods during which compliance was required and in which an excursion or exceedance as defined in ARM 17.8.1501 occurred; and

(iv) and (d) remain the same.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

REASON: This action is in response to the U.S. Environmental Protection Agency's (EPA's) direct final action noticed in the Federal Register, 68 FR 38517, amending 40 CFR 70.6(c)(5)(iii)(B) and 70.6(c)(5)(iii)(C). It is necessary for the state to adopt the revisions to the federal regulations to maintain the state's delegation of authority from EPA and the state's primacy to enforce the Title V operating permit program.

ARM 17.8.1213, as it currently reads, requires responsible officials in their annual certifications to identify each term and/or condition of the permit, the method(s) or other means used to identify the status of compliance, and whether the methods used provide continuous or intermittent data. The responsible official then identifies the status of compliance with each permit term (whether the facility was in or out of compliance). The current language incorporates federal regulation language that was adopted in 1997 but later was challenged in a court action filed by the Natural Resources Defense Council, Inc. (NRDC) and the Appalachian Power Company et al. (industry).

The proposed amendments would adopt the federal regulation change clarifying the annual compliance certification requirements and returning to language adopted in a 1992 federal rulemaking. Under the proposed amendments, ARM 17.8.1213 would require responsible officials to identify each term and/or condition of the permit and whether or not compliance with that term or condition was continuous or intermittent during the reporting period.

The proposed amendments would provide more information to the Department and the public, as the status of compliance would be more directly described. Knowledge of the method and the type of data it produces is secondary to the description of compliance. The Department has requested that facilities explain their interpretations of the terms "continuous" and "intermittent" to clarify those interpretations in annual compliance certifications under the current rule and would continue to request such information under the proposed amendments.

4. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-

0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us, to be received no later than 5:00 p.m. November 13, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Kelly O'Sullivan, attorney for the Board, has been designated to preside over and conduct the hearing.

6. 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 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 supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

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

BOARD OF ENVIRONMENTAL REVIEW

By: *Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.,
Chairperson

Reviewed by:

David Rusoff
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, October 6, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.201, 17.24.202, 17.24.203, 17.24.206, 17.24.207, 17.24.212, 17.24.213, 17.24.214, the adoption of new rules I through X, and the repeal of 17.24.204, 17.24.205 and 17.24.215 pertaining to opencut mining	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION AND REPEAL (OPENCUT MINING)

TO: All Concerned Persons

1. On November 5, 2003, at 9:00 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Department of Environmental Quality, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment, adoption 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 the Board no later than 5:00 p.m., October 27, 2003, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

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

17.24.201 APPLICABILITY (1) This subchapter applies to opencut ~~mining~~ operations as provided in the Opencut Mining Act (Title 82, chapter 4, part 4, MCA, hereinafter referred to as "the Act").

~~(2) Underground phosphate mine operators shall obtain a reclamation contract to ensure reclamation of the aboveground associated disturbance.~~

~~(3)~~ (2) ~~Those~~ An operator~~s~~ conducting a sand, gravel, bentonite, clay, or scoria ~~or phosphate rock~~ mining operation~~s~~ pursuant to the provisions of a reclamation contract issued under the Montana Opencut or Strip Mined Land Reclamation Act of 1971 ~~are~~ is recognized as being in compliance with Montana law. However, should ~~the~~ that operator begin a new opencut operation~~s~~ as defined in 82-4-431, MCA, or ~~desire to~~ expand an opencut operation~~s~~ beyond the existing contract area, ~~he~~ the operator shall be responsible for first obtaining a ~~new contract~~ permit under the provisions of the Act as amended.

(3) Contracts and permits in effect on [the effective date of these amendments] need not be amended to comply with rules and rule amendments adopted on [the effective date of these

amendments]. Applications for permits, permit amendments, and permit transfers that were submitted prior to [the effective date of these amendments] remain subject to provisions of this subchapter relating to application requirements as they read on the date the application was submitted.

~~(4) Under certain conditions specified in 82-4-431, MCA, an operator who holds a contract may remove up to 1,000 cubic yards of mineral and overburden without first obtaining an additional contract or amendment. In addition to the requirements stated in 82-4-431, MCA:~~

~~(a) the operator shall revegetate the affected land with a seed mixture containing, at a minimum, 3 different grass species, each of which shall be adapted to the climate, soil, and postmining land use of the affected area; or by using other methods and types of establishment approved by the department; and~~

~~(b) the operator shall control noxious weeds as specified in the respective district weed management plan.~~

AUTH: 82-4-422, MCA
IMP: 82-4-431, MCA

REASON: The proposed amendment to (1) is necessary because, according to the definition in the Act, "opencut mining" only includes the removal of overburden and mine materials. The rules address opencut mining, processing, and reclamation. Use of the term "opencut operation" encompasses those actions, and is necessary for consistency and to accurately describe the scope of the program and the rules. The term "opencut operation" is defined in the proposed amendments to ARM 17.24.202.

The proposed deletion of (2) is necessary because legislation in 1999 transferred regulation of phosphate mining to the Metal Mine Reclamation Act.

The proposed amendment to existing (3) is necessary because no phosphate rock mining operations remain permitted under the 1971 law; therefore, the reference to phosphate is no longer needed. Legislation in 1999 changed the term "contract" to "permit"; therefore, the rules throughout have also been amended to reflect the change from "contract" to "permit" for consistency with the 1999 legislation. Section (3) refers to the 1971 law; therefore, the term "contract" is retained until the last reference. The second sentence in (3) was amended because, as currently written, it incorrectly implies that it is legal for a permitted operator to obtain another permit after beginning a new operation.

New (3) is proposed to provide for orderly implementation of these rules. The Board has determined that it would be unfair to require resubmission of applications submitted, but not approved, prior to the effective date of these rules.

The proposed deletion of (4) is necessary because the rule repeats what is stated in the Act, and reclamation requirements are adequately addressed in other portions of the Act and rules.

17.24.202 DEFINITIONS When used in this subchapter, unless a different meaning clearly appears from the context, the following definitions apply:

~~(1)~~ (2) "Department" means the department of environmental quality provided for in Title 2, chapter 15, part 35, MCA.

~~(2) "Contiguous" and "nearby" mean within 1,000 feet.~~

(1) "Access road" means an existing or proposed non-public road used in connection with opencut operations. The term includes the roadbed, cut and fill slopes, ditches, and other structures and disturbances related to access road establishment, use, and reclamation.

(3) "Facility-level area" means access roads and areas where parking, equipment and material storage, soil and overburden stockpiling, fuel storage, mine material processing and stockpiling, other product production and storage, and water system and control structures are situated.

(4) "Main permit area" means facility-level areas and mine-level areas, except access roads.

(5) "Mine-level area" means areas where excavating, grading, and excess overburden and fines disposal occur.

(6) "Mine material" means sand, gravel, scoria, bentonite, clay, soil, and peat.

(7) "Opencut operation" means the areas and activities related to opencut mine site preparation, access road use, mine material mining and processing, and reclamation.

(8) "Overburden" means the material below the soil and above the mine material.

(9) "Soil" means the dark or root-bearing surface material, which is typically the O, A, E, and B horizons in soil profile descriptions.

AUTH: 82-4-422, MCA
IMP: 82-4-403, 82-4-422, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The proposed amendment to the introductory sentence of ARM 17.24.202 is necessary for general housekeeping purposes.

The proposed deletion of (2) is necessary because the terms "contiguous" and "nearby" are not used in the rules. Because the rules define distances as needed, these terms can be deleted.

The proposed addition of new (2) through (5) is necessary because the terms "access road," "facility-level area," "main permit area," and "mine-level area," have become part of program and operator lexicon and are used throughout the rules and program materials. It is necessary to define these terms so that they are clearly understood by all parties that are governed by or deal with these rules, to establish standard program terminology, to clarify the rules, and to present the rules according to current and appropriate terminology.

The proposed addition of new (6) is necessary because legislation in 1999 changed the term for mined substances

covered under the Act from "minerals" to "materials." This change resulted in several points of confusion since the Act and rules discuss "overburden," "waste," "soil," "carbonaceous," "road surfacing," "contaminated," "surface," and "other" materials. For clarity, "material" in the context of mined substances has been modified with "mine," thus the term "mine material." This definition is necessary for consistency with the Act, to establish standard program terminology, to clarify the rules, and to present the rules according to current and appropriate terminology. "Mineral" has been changed to "mine material" throughout the rules.

The proposed addition of new (7) is necessary because the Act defines "opencut mining" as the removal of overburden and mine material. However, the Act and rules address a broader range of activities related to an opencut mine site; therefore, a broader term is needed when referring to, and discussing the sum of, opencut site activities. This definition is necessary to establish standard program terminology, to clarify the rules, and to present the rules according to current and appropriate terminology.

The proposed addition of new (8) is necessary because mining and reclamation involve distinctly different materials - primarily soil, overburden, and mine material. It is imperative that all parties that are governed by or deal with these rules have a common understanding of what these terms mean. The definition of "overburden" in 82-4-403(9), MCA, is more inclusive than the understanding of that term by operators and Department staff, who usually distinguish between soil or soil materials and overburden. The definition in the rule is more specific than that in the Act in order to succinctly describe the location of material commonly called "overburden" by operators and regulators. The definition of "overburden" in the rule is accepted by operators and regulators, and is necessary to establish standard program terminology and to clarify the rules.

The proposed addition of new (9) is necessary because this definition succinctly pinpoints the location of the material commonly called "soil." This description is accepted in the regulatory and private sectors, and is necessary to establish standard program terminology, to clarify the rules, and to present the rules according to current and appropriate terminology.

17.24.203 BOND OR OTHER SECURITY (1) An application for a ~~contract~~ permit must be accompanied by a bond or other ~~form of~~ security acceptable to the department under 82-4-433, MCA, of at least $200~~.00~~ for each acre of affected land as defined in 82-4-403, MCA. After the department has evaluated the site it may require an increase in the amount of bond or other security in accordance with 82-4-433, MCA.

(2) The department may adjust the bond~~ing~~ or other security level~~s~~ yearly. Should the department determine that additional bond or other ~~securities are~~ security is required, the operator ~~must~~ shall submit ~~such additional security~~ it

within 30 days of notification by the department.

(3) If the bond~~, letter of credit,~~ or other ~~form of~~ security is canceled or otherwise becomes ineffective, the operator ~~must~~ shall reinstate ~~such bond or~~ it or replace ~~such bond or security~~ it with ~~other~~ another bond~~, letter of credit,~~ or other ~~form of~~ security acceptable to the department under 82-4-433, MCA, within 30 days ~~after~~ of notification by the department of the cancellation. Upon failure of the operator to reinstate or replace such bond or other security within that time, the department may suspend the ~~reclamation contract(s)~~ permit(s) secured by such bond or other security until its reinstatement or replacement ~~of the bond or other security has been made~~. The operator shall immediately cease ~~all~~ opencut ~~mining~~ operations, except reclamation activities, on lands covered by a ~~reclamation contract which has been~~ suspended permit.

(4) ~~Any requests~~ Requests for full or partial release of bond or other ~~reclamation~~ security must be submitted on forms provided by the department ~~and may be submitted along with the annual progress report~~.

AUTH: 82-4-422, MCA
IMP: 82-4-432, 82-4-433, MCA

REASON: The proposed amendments to (1) and (2) are necessary to establish standard program terminology and to clarify the rules. The terminology "bond or other security" is necessary to eliminate confusion. It is the terminology used in the bonding statute.

The proposed amendment to (3) is necessary because "letter of credit" is already addressed in the Act along with other forms of security; therefore, it does not need to be specially listed here.

The proposed amendment to (4) is necessary because an operator may submit a release request at any time, so it is not necessary to mention the annual progress report.

17.24.206 LANDOWNER~~'S~~ CONSENT ~~TO~~ FOR RECLAMATION (1) ~~In order to ensure that the affected land will be reclaimed as provided in the mining and reclamation plan, the~~ An operator shall secure the ~~agreement in writing~~ consent of the owner of the land to be affected by ~~mining~~ opencut operations to allow the operator, ~~or~~ the department, or agents or contractors of the department, to enter and reclaim the affected land as provided in the plan of operation. The landowner consent must be submitted on a form provided by the department. No application for a ~~contract shall~~ permit, or an amendment to add acreage or change the postmining land use, may be approved unless accompanied by ~~such an agreement in a form approved by the department and executed by the landowner~~ a landowner consent form.

AUTH: 82-4-422, MCA
IMP: 82-4-422, 82-4-423, 82-4-432, 82-4-434, MCA

REASON: The proposed amendment to (1) is necessary because the introductory phrase is covered in the ensuing text. Use of the word "consent," rather than "agreement in writing," is consistent with the use of the term throughout the rules. The proposed amendment is also necessary to reflect the change from "mining" to the broader term "opencut operation." The addition of a consent requirement for amendments that will add acreage or change the postmining land use is necessary to ensure that the landowner's consent remains in effect. The amendment also clarifies that the operator must use the proper form from the Department to obtain the consent of the landowner.

17.24.207 ADDITIONAL REQUIREMENTS FOR BENTONITE MINES

(1) In addition to the requirements imposed by ARM 17.24.203, ~~through~~ 17.24.206, and [New Rules I through VII], the department may require the following information as part of the plan of operation for a bentonite mining operation: ~~an operator mining bentonite to submit information described in this rule as part of the mining and reclamation plan.~~

~~(2)~~ (a) ~~The department may require~~ an analysis of the ~~surface materials~~ soil and each major stratum in the overburden, including determinations of saturation percentage, pH, electrical conductivity, sodium ~~absorption~~ adsorption ratio, texture, and additional ~~analyses as required by~~ characteristics the department may require.

(i) In submitting this information, the operator shall also list:

(A) the number of samples taken~~,~~;

(B) the methods by which they were taken~~,~~;

(C) the location and depths from which they were taken~~,~~;

(D) the names and addresses of the persons who took the samples ~~if other than the operator~~,;

(E) the methods of analysis~~,~~; and

(F) the names and addresses of ~~those~~ the persons who analyzed the samples.

(ii) The soil~~s analyses~~ analysis must be accompanied by a map delineating:

(A) the soil types~~,~~;

(B) sample site locations~~,~~;

(C) ~~depths~~ thicknesses of soil~~s materials~~ and overburden to be ~~salvaged~~ stripped for each soil type~~,~~; and

(D) the dominant vegetative species present on each soil type~~.~~; and

~~(3) The department may require a listing of the fish and wildlife species on and contiguous to the proposed mine site, relative abundance of each, and season(s) of use.~~

~~(4)~~ (b) ~~The department may require~~ a description of the ~~final~~ disposal of bentonite cleanings, stray bentonite seams, and overburden that are unsuitable for plant growth. ~~encountered in stripping overburden, and materials toxic to plants or animals. At a minimum, s~~Such materials must ~~first~~ be ~~covered with~~ buried under at least ~~3~~ three feet of ~~non-toxic overburden, if available, and then with salvaged materials where~~

~~available~~ material suitable for sustaining the postmining vegetation.

~~(5) The department may require a description of how grading on all bentonite pits and spoil piles will be conducted. At a minimum, the grading of all bentonite pits must include backfilling the pit to the degree that, when possible, the natural drainage pattern will be maintained and all potential boggy conditions will be eliminated unless the surface landowner indicates to the department, in writing, that development of a water body is desirable and the department approves the design of such water body. If the landowner deems such a water body to be desirable, the operator shall then submit to the department a diagram showing the design of the water body. The department shall disapprove any design for a water body which creates unsafe conditions for livestock or wildlife, adversely affects other landowner's rights, or does not reasonably assure a permanent, viable water body.~~

~~(6) The department may require a description of how mining and reclamation on a hillside will be carried out. At a minimum, all overburden removed must be deposited in such a manner that it can be placed back in the cut and final grading will return the disturbed area to as near the original topography as possible.~~

~~(7) The department may require a description of annual grasses or grains that, at the department's direction, may be used to stabilize certain disturbed areas prior to the establishment of the required cover of perennial vegetation.~~

~~(8) If the location of future bentonite excavations cannot be determined more than a year in advance, the department may require the information described in this rule to be submitted to the department yearly, 30 days prior to the anniversary date of the contract.~~

AUTH: 82-4-422, MCA
IMP: 82-4-432, 82-4-434, MCA

REASON: The proposed amendments of (1) and (2) are necessary for clarification and consistency with the rules and the Act.

The proposed deletion of (3) is necessary because this information is set forth in proposed New Rule VII.

The proposed amendment to (4) is necessary to make the burial depth requirement consistent with the burial requirement under proposed New Rule III. The availability language has been eliminated because non-toxic overburden of salvaged materials requirements are necessary to ensure that reclamation occurs.

The proposed deletion of (5) is necessary since this information is set forth in proposed New Rules III and IV.

The proposed deletion of (6) is necessary because the requirements for backfilling and grading are addressed in proposed New Rules III and IV.

The proposed deletion of (7) is necessary because cover crop use is set forth in proposed New Rule IV.

The proposed deletion of (8) is necessary because current

operators identify future bentonite excavation areas more than a year in advance. Operators also submit complete permit applications that cover several years of operation. An operator can change its plan of operation through the amendment process; therefore, this section is not needed.

17.24.212 APPROVAL OR DISAPPROVAL OF AN APPLICATION FOR A ~~CONTRACT~~ PERMIT (1) Upon receipt of ~~an~~ a permit application ~~for a mined land reclamation contract~~ and within the time limits provided in ~~82-4-434~~ 82-4-432(4), MCA, the department shall ~~conduct a detailed examination of~~ inspect the proposed site and evaluate the ~~operator's~~ application to determine if the requirements of the Act~~,~~ and this subchapter~~,~~ will be satisfied. If the department is unable to evaluate a permit application because weather or other field conditions prevent an adequate site inspection, then the application must be disapproved.

(2) The department shall approve ~~the~~ a permit application ~~and enter into a contract with the operator~~ if it determines that:

(a) the application contains the following:

(i) $50 application fee, if required;

(ii) a completed copy of the permit application form provided by the department;

(iii) plan of operation submitted on a form provided by the department;

(iv) bond or other security, if required;

(v) landowner consent form; and

(vi) zoning compliance form; and

(b) the application materials satisfy ~~fee, bond or security, and the detailed mining and reclamation will satisfy~~ the requirements of the Act and this subchapter. ~~If, however, the department determines that the mining or reclamation of an area for which an application has been submitted cannot be carried out in accordance with the provisions of the Act and this subchapter, or if the department is not able to make such a determination because weather or other conditions on site do not permit an appropriate on-site evaluation, then the application shall be disapproved.~~

~~(2) The department may not approve any application involving excavations on any river or live stream channels or on floodways at locations likely to cause detrimental erosion or offer a new channel to the river or stream at times of flooding except that such excavations may be allowed when necessary to protect or promote the health, safety, or welfare of the people.~~

(3) Before approving an operator's permit application~~,~~ ~~for a contract~~ the department shall submit a copy of the ~~mining and reclamation~~ plan of operation, including map(s), to the ~~director of the university of Montana statewide archeological survey~~ state historic preservation office for evaluation of possible cultural resources ~~archaeological or historical~~ in the proposed permit area ~~to be mined, as required by 82-4-434, MCA~~. If the site is likely to contain significant cultural resources, ~~archaeological or historical artifacts, then,~~ the department may require that the operator sponsor a~~n~~ cultural resources

~~archaeological~~ survey by a competent professional ~~authorities~~ authority prior to approving the application.

~~(4) If the site is likely to contain critical fish and wildlife use areas, the department may require a fish and wildlife survey covering all seasons of wildlife use. This survey report, when submitted, shall include a complete presentation of all field data, identification of the data source and a detailed description of the methodology used to gather the data.~~

~~(5)~~ (4) ~~All mined land reclamation contracts~~ A permit must provide that the operator shall comply with ~~all~~ the requirements of the ~~Opencut Mining~~ Act and ~~rules adopted thereunder~~ this subchapter.

(5) A permit does not become operative until issued by the department, and an applicant may not begin opencut operations until a permit is issued.

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The proposed amendment to (1) is necessary because site inspections are an essential part of the application review process. They are important because they give Department (Opencut Mine Program) staff an understanding of the site layout and features and surrounding lands and features. They provide information to particular factors or resources of concern, such as the proximity and location of residences, streams, and wildlife, in order to assure that the requirements of the Act and rules are complied with. Also, Department staff is trained as para-archeologists and conduct on-site reconnaissance for cultural resources on all sites undisturbed by modern human activity, as part of the Department's responsibility under the Act to protect such resources from mining operations. The language requiring denial if an adequate site inspection cannot be made is being relocated for purposes of organization. The last sentence is modified language from current ARM 17.24.212(1).

Proposed (2) is necessary to clarify what a permit application must contain and under what circumstances it must be approved. The current rule does not reference all the components of an application that must be provided under the Act and rules. In order to ensure compliance with these requirements, an application should not be approved if it does not contain all these components. The amendments so provide. The proposed language "if required" is necessary because fees and bonds are not required for government entities, and fees are not required for soil and peat mining.

The proposed deletion of existing (2) is necessary because such requirements are adequately incorporated in proposed New Rule III.

The proposed amendment to (3) to replace "mining and reclamation plan" with "plan of operation" is proposed for consistency of terminology with New Rule III, and because "plan

of operation" is a more comprehensive term that covers all disturbance aspects of an opencut operation, not only mining and reclamation. Cultural resources must be protected from all disturbance, not just mining and reclamation, and thus the "plan of operation" needs to be submitted to the agency that currently reviews opencut plans in regard to cultural resources. "Cultural resources" is a more commonly used term that means the same as "archeological and historical values." The amendment of "area to be mined" to "proposed permit area" is necessary since opencut operations disturb this broader area.

The proposed deletion of existing (4) is for the purpose of moving the option of requiring fish and wildlife information from ARM 17.24.212(4) and 17.24.207(3) for bentonite mines and consolidating it under proposed New Rule VII. This will streamline this requirement.

The proposed amendment to (5) is necessary to ensure that operators know that the prohibition contained in the Act against operating without a permit remains in effect until the permit is issued.

17.24.213 AMENDMENT ~~AND REVISION~~ OF ~~CONTRACTS~~ PERMITS

(1) An operator ~~conducting a mining operation under the provisions of a contract issued pursuant to the Act~~ may ~~seek~~ apply for an amendment to ~~either the bond and security portions of the contract, or the mining and reclamation plan,~~ its permit by ~~filing~~ submitting ~~a~~ an amendment application to ~~request for an amendment with~~ the department. Upon receipt of an amendment application, the department shall, if it determines that site inspection is necessary to adequately evaluate the application, inspect the proposed site and evaluate the application to determine if the requirements of the Act and this subchapter will be satisfied. If the department determines that a site inspection is necessary and it is unable to evaluate an application because weather or other field conditions prevent an adequate site inspection, the department shall disapprove the application.

~~(2) The bond and security portion of an existing contract may be amended only pursuant to the provisions of 82-4-432, 82-4-433, or ARM 17.24.203.~~

~~(3) The reclamation plan in an existing contract can only be amended pursuant to the provisions of 82-4-434, MCA. A request for an extension of time to complete a mining and reclamation plan shall be considered a request for an amendment to an existing contract.~~

(2) The department shall approve an amendment application if it determines that:

(a) the application contains a completed copy of the amendment application form provided by the department, additional bond if necessary, a new landowner consent form if required under ARM 17.24.206(1), a new zoning compliance form if required under [New Rule VIII], and the proposed plan of operation revisions; and

(b) the application and plan of operation revisions satisfy the requirements of the Act and this subchapter.

~~(4)~~ (3) ~~Regardless of the portion of a contract for which an amendment is sought, no~~ An amendment does not become~~s~~ operative until approved by the department. Once approved~~,~~ ~~by the department, however,~~ an amendment becomes ~~a~~ part of the original ~~contract~~ permit.

~~(5)~~ (4) An amendment ~~approved by the department pursuant to this rule~~ application does not require the payment of an additional fee.

AUTH: 82-4-422, MCA
IMP: 82-4-432, 82-4-433, 82-4-434, 82-4-436, MCA

REASON: The proposed amendment to the catchphrase in ARM 17.24.213 is necessary because the term "revision" is redundant.

The proposed amendment to (1) is necessary to delete the reference to bond, security, and plan since it does not correctly address the broader scope of what a permit amendment involves. Reference is made to the portion of the Act that addresses amendments. Site inspections may be an essential part of the amendment application review process, providing Department staff an understanding of the site layout and features and surrounding lands and features. They provide information to particular factors or resources of concern, such as the proximity and location of residences, streams, and wildlife, in order to ensure that the requirements of the Act and rules are complied with. Also, Department staff is trained as para-archeologists and conduct on-site reconnaissance for cultural resources on all sites undisturbed by modern human activity, as part of the Department's responsibility under the Act to protect such resources.

The proposed deletion of existing (2) and (3) is necessary because these requirements are consolidated in (1).

Proposed new (2) is necessary to clarify what a permit amendment application must contain and when it must be approved. The current rule does not reference all the components of an application that must be provided under the Act and rules. In order to ensure compliance with these requirements, an application should not be approved if it does not contain all these components. The amendments so provide.

The proposed amendment to existing (4) is necessary for conciseness and clarity.

The proposed amendment to existing (5) is necessary to remove excess verbiage.

17.24.214 ANNUAL PROGRESS REPORT (1) ~~Every~~ An operator ~~holding~~ who possesses one or more ~~a reclamation contract~~ permits ~~pursuant to the Act must~~ shall submit one annual progress report for the previous calendar year to the department ~~between January 15 and~~ on or before March ~~15~~ 1 of each year.

(2) The annual progress report must be ~~made~~ submitted on ~~the~~ a form provided by the department. ~~and~~ In addition to the requirements in 82-4-403, MCA, the report must list all of the operator's permitted sites and provide the information required by the department for each ~~mine~~ of those site~~s~~ ~~operated or~~

~~reclaimed during the calendar year~~.

~~(3) Updated maps must be submitted when the most current map on file with the department for a site no longer accurately represents on-the-ground conditions at the site. Updated maps must show:~~

~~(a) the features required by ARM 17.24.204;~~

~~(b) the areas mined to date;~~

~~(c) the areas reclaimed to date; and~~

~~(d) any other features deemed necessary by the department.~~

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-434, MCA

REASON: The proposed amendment to ARM 17.24.214(1) is necessary to clarify that only one progress report is to be submitted, to clarify the report period, and to provide operators more latitude regarding the time for submission of the report.

The proposed amendments to (2) and (3) are necessary for clarification, to include a reference to the Act's definition of "progress report" which was expanded by legislation in 1999, and to delete map requirements that are no longer needed. Requiring that an operator list all permitted sites on its report is more administratively convenient for the Department in its annual evaluation of all permitted sites. The Department supplies a list of permitted sites with each annual progress report reminder to the operator and requests minimal information on the report; therefore, it is not difficult for an operator to list and report the status of its sites.

4. The proposed new rules provide as follows:

NEW RULE I GENERAL APPLICATION CONTENT AND PROCEDURES

(1) An application must contain the information required by 82-4-432, MCA, and [New Rules II through IV and VI through VIII]. Review of the application is conducted in accordance with 82-4-432, MCA, and (2).

(2) If, in its review, the department identifies additional information pursuant to [New Rules III(3), VI(7), and VII(1)] that must be submitted, the application is deficient until that information is submitted. The department shall notify the applicant of the additional information required through a deficiency notification, pursuant to 82-4-432(4), MCA.

(3) Application materials printed in color or larger than 11 x 17 inches must be submitted in duplicate, as required by the department.

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-422, 82-4-431, 82-4-432, MCA

REASON: The purpose of proposed (1) is to provide a convenient reference to the Act for the general materials required to be submitted in an application.

Section (2) is proposed because the purpose of additional

application materials is to provide information necessary to ensure that the requirements of the Act and rules are met. Review of the application cannot be performed until the materials are provided.

Proposed (3) is an important administrative requirement because the Department has no easy method to copy the materials referenced if copies of the application are needed for both the Helena office and a field office.

NEW RULE II PLAN OF OPERATION--PREMINE INFORMATION

(1) The plan of operation must include the following premine information:

(a) uses of natural and man-made surface water features in and within 500 feet of access roads and 1,000 feet of the main permit area. Surface water features include, but are not limited to, ephemeral, intermittent, and perennial streams, wetlands, ponds, springs, ditches, and impoundments;

(b) depths, water levels, and uses of water wells in and within 1,000 feet of the main permit area, and the information sources used, such as landowners, field observations, and water well logs. Available well logs must be submitted with the plan of operation;

(c) estimated ordinary high, ordinary, and ordinary low water table levels in the main permit area, and the information sources used, such as landowners, field observations, and water well logs;

(d) average soil and overburden thicknesses in the main permit area. At least three separate test hole locations must be used to measure these thicknesses. Places where the soil and overburden profile is exposed, such as roadcuts, may be used as test hole locations. Natural resources conservation service or other soil survey information may be used to supplement, but not replace, test hole information; and

(e) structures and residential areas that could be impacted by opencut operations. Examples of such areas and structures include, but are not limited to, inhabitable dwellings and commercial and industrial facilities.

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-422, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The purpose of proposed New Rule II is to change and rearrange the information requirements of current ARM 17.24.204(3) so that there is less emphasis on narrative information and more emphasis on map information. It is easier and more convenient for applicants to provide, and the Department to use, map information. Information about site location, topography, present land uses, past mining disturbances, vegetation, and wildlife habitat locations is required in proposed New Rule VI. Map and narrative information is required for surface water features, water wells, soil and overburden test holes, and residential areas and structures.

The requirements are revised to reflect current standards, practices, and needs.

The purpose of proposed (1)(a) and (b) is to split current ARM 17.24.204(3)(d) into the separate topics of surface water and water wells. This is needed to emphasize their individual importance in the evaluation of a site for mining, reclamation, and related hydrologic impacts. Separate listing also allows for clear statements to be made regarding the information requirements for each topic. The first half of the water well text is necessary so that adequate water table level and water source information is available for making appropriate mining, reclamation, and impact decisions regarding ground water resources. The requirement to provide information sources is needed so that the operator validates the information provided.

The purpose of proposed (1)(c) is to require water table information necessary for site evaluation, and to set forth a requirement to provide information sources so that the operator validates the information provided.

The purpose of proposed (1)(d) is to define the soil and overburden information that is needed to properly evaluate these resources regarding salvage, storage, and replacement. The requirement to provide information sources is needed so that the operator validates the information provided.

The purpose of proposed (1)(e) is to require the types of additional information that are necessary to reflect the 1999 legislative amendments (82-4-434(2)(o) and (p), MCA) regarding the mitigation of impacts to residential areas and to adjacent lands and structures.

NEW RULE III PLAN OF OPERATION--SITE PREPARATION, MINING, AND PROCESSING PLANS--AND PERFORMANCE STANDARDS (1) The plan of operation must include the following site preparation, mining, and processing plan commitments and information:

(a) an access road and main permit area boundary markers section, including a statement that the operator has clearly marked on the ground the access road segments to be improved or constructed and the main permit area boundary segments that require marking, and will maintain the markings as required by this rule. Road segments to be improved or constructed must be marked at every corner and along each segment so that the markers are visible from one to the next and no more than 300 feet apart. Those portions of the boundary defined by definite topographic changes, natural barriers, or man-made structures, or located in active hayland or cropland, need not be marked. Other boundary segments must be marked at every corner and along each segment so that the markers are visible from one to the next and no more than 300 feet apart. Acceptable road and boundary markers include brightly colored, brightly painted, or brightly marked fenceposts, rocks, trees, and other durable objects. A boundary marker must remain functional until the beginning of final reclamation of the area next to that marker;

(b) an access road establishment, use, and reclamation section, including:

(i) a statement that the operator will appropriately

establish, use, and reclaim access roads, and downsize to the premine condition or totally reclaim these roads by retrieving and properly handling surfacing materials; backfilling and grading road locations in a manner that leaves stable surfaces blended into the surrounding topography and drainageways; and ripping, resoiling, reconditioning, and seeding or planting the locations with the approved vegetative species, unless the landowner requests in writing that specific roads or portions thereof remain open and the department approves the request; and

(ii) a description of the access roads or portions thereof to be improved or constructed, including their locations, lengths, widths, drainageway crossings, and surfacing; and of the roads or portions thereof proposed to remain open, per landowner request, at the conclusion of opencut operations, including their locations, intended uses, and final widths. Some or all of this information may be presented on the site or area map. Improvements include, but are not limited to, blading, widening, and surfacing. A road or portion thereof may remain open for a reasonable postmining use and must be left in a condition suitable for that use;

(c) a mining, processing, and hauling section, including a description of the methods and equipment to be used to mine and process mine material, and to haul it and the products made from it. The department may require a description of the anticipated general mining progression, including where the first stripping and excavation will occur, the direction mining will progress, and other relevant information. The anticipated location and timing for the installation of facilities such as a screen, crusher, asphalt plant, wash plant, batch plant, pug mill, and other facilities may also be required;

(d) an hours of operation section, including a description of the proposed hours of operation. The department may reasonably limit hours to reduce adverse impacts on residential areas. A complete and accurate log that lists general on-site activities and the dates and times they occurred must be maintained for an opencut operation subject to restricted hours. Log information must be presented to the department upon request;

(e) a water protection and management section, including:

(i) a statement that the operator will take appropriate measures to protect on- and off-site surface water and ground water from deterioration of water quality and quantity that could be caused by opencut operations; take appropriate measures to prevent, minimize, or mitigate adverse impacts to on- and off-site surface water and ground water systems and structures that could be caused by opencut operations; keep non-mobile equipment above the ordinary high water level of surface water and ground water; appropriately establish, use, and reclaim opencut-operation-related hydrologic systems and structures; install or construct fuel storage containment structures in accordance with the current codes adopted by the state fire marshal for each single-wall, non-mobile, fuel storage tank placed and used in and within 500 feet of access roads and 1,000 feet of the main permit area; routinely inspect and maintain

these tanks to prevent leaks and spills; retrieve and discard spilled fuel and contaminated materials in a lawful manner; and report to the department a fuel spill that reaches state waters, as defined in 75-5-103, MCA, or that is greater than 25 gallons. The department may require on- and off-site surface water and ground water quality and quantity monitoring before, during, and after opencut operations. When opencut operations will cause the diversion, capture, or use of water, the operator shall consult with the regional office of the department of natural resources and conservation, water resources division, concerning water rights and submit a summary of that consultation with the plan of operation; and

(ii) a description of the source, quantity, storage, use, and discharge of water to be used for opencut operations; special measures to be used to protect on- and off-site surface water and ground water from deterioration of water quality and quantity; special measures to be used to prevent, minimize, or mitigate on- and off-site impacts on surface water and ground water systems and structures; water management and erosion control plans for surface disturbances that will intercept a drainageway, significant runoff, or ground water; measures to be used to protect the water rights of other parties or to replace an adversely affected water source that had a beneficial use; and fuel storage containment structures to be installed or constructed;

(f) a mine material handling section, including:

(i) a statement that the operator will keep mine material stockpiles out of drainage bottoms and off of slopes greater than 3:1, and a statement that, at the conclusion of opencut operations, the operator will, except as provided in (ii) below, remove from the permit area or bury all excavated or processed mine material, unless the landowner requests on the landowner consent form that specific types, grades, and quantities of mine material remain stockpiled; consolidate mine materials to remain stockpiled into piles of similar type and grade; and leave the quantity of soil that was stripped from the unreclaimed area under and around a mine material stockpile in a shaped and seeded pile within 100 feet of that stockpile. The operator remains liable for the unreclaimed area under and around a mine material stockpile until the mine material is removed and the site reclaimed, or ownership of the stockpile or possession of the permit is transferred to the landowner or another party; and

(ii) a description of the types, grades, and estimated quantities of mine material proposed to remain stockpiled per landowner request at the conclusion of opencut operations, and justifications for the quantities based on current and expected demand for the materials. The department shall reject a landowner's request that certain mine materials remain stockpiled if adequate justification is not provided;

(g) a mined-area backfill section, including:

(i) a statement that the operator will use only clean fill from any source and on-site-generated asphaltic pavement as mined-area backfill; dispose of other wastes in compliance with applicable state laws and rules; bury on-site-generated

asphaltic pavement, coarse clean fill, and other clean fill unsuitable for plant growth under at least three feet of material suitable for sustaining the postmining vegetation; and, at the conclusion of opencut operations, remove stockpiled asphaltic pavement, concrete with protruding metal, and clean fill from the permit area. Clean fill consists of dirt, sand, fines, gravel, oversize rock, and concrete with no protruding metal. On-site generated asphaltic pavement must be disposed of at least 25 feet above the ordinary high water table. The operator may propose that excess on-site-generated overburden and fines be disposed of at a site outside of the mined area but within the permit area. Fines consist of natural or crushed rock that is 1/4 inch or smaller; and

(ii) a description of the material types, estimated quantities, and fill designs for mined-area backfill, and of the plan for stockpiling and recycling imported asphaltic pavement and concrete;

(h) an additional impacts section, including a description of the methods and materials to be used to minimize impacts, as necessary, on the residential areas and structures identified under [New Rule II(1)(e)]; repair or replace man-made structures affected by opencut operations within the permit area; and address other opencut operation impacts not addressed in other sections of the plan of operation; and

(i) an additional commitments section, including a statement that the operator will inform key personnel and subcontractors involved in opencut operations of the requirements of the plan of operation; take proper precautions to prevent wildfires; provide appropriate protection for cultural resources that could be affected by opencut operations and promptly notify the state historic preservation office should such resources be found; and submit an annual progress report to the department.

(2) Upon issuance of the permit, the operator shall comply with all commitments required by this rule and with the requirements for the conduct of operations contained in this rule.

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The purpose of proposed (1)(a) is to replace current ARM 17.24.205(16). This section is needed to clearly outline functional road and boundary marking requirements. The requirements of ARM 17.24.205(16) are retained and expanded, except that the requirement to mark the "centerlines" of roads is deleted since markers so located tend to be run over and destroyed. By having to mark access roads and the main permit area, the applicant must pay close attention to access road location and main permit area location and size. Markers help ensure that access roads are located as described in the plan, help ensure that the operation is kept within the permitted area, and help the department in the performance of site

evaluations.

The purpose of proposed (1)(b) is to replace current ARM 17.24.205(5), (6), and (10), and combine the road improvement, construction, and reclamation text from these sections into one rule. The proposed text is needed to clearly outline necessary road requirements. The requirements of current ARM 17.24.205(5), (6), and (10) are retained and expanded to require more information and thereby allow the Department to evaluate the proposed roads, except that, instead of the operator proposing that a road be left open, the request must originate with the landowner via a written request. This method will help ensure that only needed roads remain open.

The purpose of proposed (1)(c) is to require basic opencut operations information so that the Department can properly evaluate potential environmental impacts and address possible public concerns.

The purpose of proposed (1)(d) is to implement the requirement of restricted hours of operation since the distance between opencut mine sites and populated areas is decreasing over time, and the public is becoming more concerned about opencut operations.

The purpose of proposed (1)(e) is to replace current ARM 17.24.205(7) and (8) and combine the water management and protection text into one rule. The proposed text is needed to clearly outline necessary water protection and management requirements. The requirements of current ARM 17.24.205(7) and (8) are retained. Text has been added concerning non-mobile equipment location so that such equipment is not placed where it could be submerged in water and release pollutants. Text has also been added to require fuel storage containment structures for single-wall, non-mobile, fuel storage tanks in order to protect vegetation, soils, surface water, and ground water from potential contamination due to leakage from these more fragile tanks.

The purpose of proposed (1)(f) is to replace current ARM 17.24.205(12). The requirements of current ARM 17.24.205(12) are retained, except for the deletion of the requirements to grade reject fines stockpiles to a 4:1 slope. The requirement was eliminated because, when such piles are graded to a 4:1 slope, they can cover a significant amount of ground, and grading of these temporary stockpiles achieves no significant environmental advantage. Text has been added to prohibit the placement of mine material stockpiles in drainage bottoms in order to protect drainageways and prevent mine materials from being washed downstream by runoff. Text has been added to prohibit the placement of mine material on steeper slopes so that these more fragile and harder to reclaim surfaces will remain undisturbed, and so that mine material will be located where it can be retrieved. Clarification of the procedure for leaving soil next to mine material stockpiles is needed so that a proper quantity of soil is left in an appropriate location for mine material stockpile reclamation. The text also establishes a new requirement that mine materials be buried or removed from the site unless the landowner requests in writing that some or

all materials remain stockpiled. This requirement will help ensure that only valuable mine materials that are likely to be used will remain stockpiled.

The purpose of proposed (1)(g) is to replace current ARM 17.24.205(11). The requirements of current ARM 17.24.205(11) are retained, except that the requirement to dispose of wastes in accordance with the solid waste laws and rules has been broadened to include all applicable laws and rules. This would include the Water Quality Act and thereby ensure that water quality is protected. The description of clean fill conforms to the definition in the solid waste rules. Language is added to provide a mechanism for off-site generated asphalt and concrete stockpiling and recycling. Concrete and asphaltic pavement recycling is increasing at opencut sites, and this mechanism provides an alternative mechanism to the landfill operating license that would otherwise be required for recycling of this material by some opencut operations.

The purpose of proposed (1)(h) is to implement the 1999 legislative additions of 82-4-434(2)(o) and (p), MCA, which require mitigation of impacts to residential areas and other affected lands and structures. Added to this rule, to protect landowners, is a requirement that an operator repair or replace structures such as roads, gates, fences, and irrigation ditches within the permit area that may be disturbed or obliterated during an opencut operation. The catchall sentence added at the end is necessary to cover any site-specific impacts not otherwise addressed in the plan of operation.

The purpose of proposed (1)(i) is to combine and replace current ARM 17.24.205(17), (18), and (19), and add the annual report requirement that is in the Act and the Department's plan of operation form. The proposed text is needed to consolidate these miscellaneous statements under one rule. The personnel statement is amended to focus on "key personnel and subcontractors" rather than on "all persons" since in many cases it is not practical or necessary to have all on-site personnel familiar with the plan of operation. The archeological statement is amended so that all affected areas will be given appropriate protection, not just areas to be mined.

Section (2) is added to ensure that commitments made by applicants and performance standards imposed in this rule are enforceable.

NEW RULE IV PLAN OF OPERATION--RECLAMATION PLAN--AND PERFORMANCE STANDARDS (1) The plan of operation must include the following site reclamation plan commitments and information:

(a) a postmining land uses section, including a description of the type, location, and size of each postmining land use area in the main permit area. Postmining land use types include, but are not limited to, water source pond, wetland, fish pond, riparian area, grassland, shrubland, woodland, special use pasture, hayland, cropland, wildlife habitat, livestock protection site, recreation site, and residential, commercial, and industrial building sites;

(b) a soil and overburden handling section, including:

(i) a statement that the operator will strip soil before other opencut operation disturbances occur; strip, stockpile, and replace soil separately from overburden; strip a minimum of six inches of soil, if available, from accessible facility-level areas; strip all soil from accessible mine-level areas; strip and retain enough overburden, if available, from mine-level areas so that up to an 18-inch thickness of overburden and soil can be replaced on dryland mine-level reclamation, and up to a 36-inch thickness of overburden and soil can be replaced on cropland and irrigated mine-level reclamation; maintain at least a 10-foot buffer stripped of soil and needed overburden along the edges of highwalls; haul soil and overburden directly to areas prepared for resoiling, or stockpile them and protect them from erosion, contamination, compaction, and unnecessary disturbance; at the first seasonal opportunity, shape and seed to an approved perennial species mix the soil and overburden stockpiles that will remain in place for more than one year; and keep all soil on site and accessible until the approved postmining land uses are assured to the department's satisfaction. Only initial setup activities and soil stockpiling may occur on unstripped areas. The department may require that more than a six-inch thickness of soil be stripped from facility-level areas in order to protect soil quantity or quality for certain postmining land uses; and

(ii) a description of the average thicknesses of overburden and soil to be replaced on mine-level areas. Resoiled surfaces must be seeded to a cover crop, or seeded or planted to the approved vegetative species, at the first seasonal opportunity after resoiling;

(c) a surface cleanup and grading section, including:

(i) a statement that the operator will retrieve and properly use, stockpile, or dispose of all refuse, surfacing, and spilled materials found on and along access roads and in the main permit area, and leave reclaimed surfaces in a stable condition and with 5:1 or flatter slopes for hayland and cropland, 4:1 or flatter slopes for sandy surfaces, and 3:1 or flatter slopes for other sites and surfaces; leave them graded to drain off-site or concentrate water in low areas; leave them at least three feet above the ordinary water table level for dryland reclamation and at approved depths below the ordinary water table level for pond reclamation; and blend them into the surrounding topography and drainageways. The applicant may apply for and the department may approve steeper slopes for certain postmining land uses and seasonal ponds. The department may require water-table-level monitoring to ensure that appropriate reclaimed surface elevations are established; and

(ii) a description of the locations and designs for special reclamation features such as drainageways, ponds, and building sites. Reclaimed drainageways must be located in their approximate premine locations, have channel and floodplain dimensions and gradients that approximate premine conditions, and connect to undisturbed drainageways in a stable manner;

(d) an overburden and soil reconditioning section, including a statement that the operator will alleviate

overburden and soil compaction by deep tilling replaced overburden, graded surfaces, and other compacted surfaces to a depth of at least 12 inches before resoiling, and by deep tilling through the soil and into the surface of the underlying material after resoiling. Deep tillage must be done on the contour and when the overburden and soil are dry enough to shatter. Deep tilled areas must be protected from recompaction. Deep tillage is not required for relatively non-compactible materials such as sands, materials with a rock fragment content of 35% or more by volume, and bedrock. Tilling deeper than the soil thickness is not required when cobbly material or bedrock underlies the soil;

(e) a revegetation section, including:

(i) a statement that the operator will establish vegetation capable of sustaining the designated postmining land uses; ensure that areas seeded or planted to perennial species will be appropriately protected and managed from the time of seeding or planting through two growing seasons or until the vegetation is established, whichever is longer; use seed that is as weed free as is reasonably possible; and comply with the noxious weed control plan approved by the respective weed district for the opencut operation. Revegetation success on a non-cropland area is achieved when vegetation capable of sustaining the designated postmining land use has established. Revegetation success on a cropland area is achieved when a crop has been harvested from the entire area and the yield is comparable to those of crops grown on similar sites under similar growing conditions. A copy of the approved noxious weed control plan must be submitted with the plan of operation; and

(ii) a description of the types and rates of fertilizer and other soil amendment applications; methods of seedbed preparation; and methods, species, and rates of seeding or planting. When the postmining land use is hayland or cropland, the soil surface must be left free of rocks that could impede agricultural equipment. Seedbed preparation and drill seeding must be done on the contour. Broadcast seeding must be done at rates at least 100% higher than drill seeding rates and the surface dragged or pressed to cover the seed. Seeding rates must be given as pounds of pure live seed per acre. Seeding must occur during the late fall or early spring seeding seasons. Cover crop seeding and mulch application may be needed to help stabilize an area or establish vegetation;

(f) a reclamation timeframes section, including:

(i) a statement that the operator will complete all reclamation work on an area no longer needed for opencut operations, or that the operator no longer has the right to use for opencut operations, within one year after the cessation of such operations or termination of such right. If it is not practical for the operator to reclaim a certain area until other areas are also available for reclamation, the operator may request, and the department may approve, an alternate reclamation deadline for that area; and

(ii) a reasonable estimate of the month and year by which final reclamation will be completed considering the estimated

mine material demand, expected rate of production, and accessible mine material reserves. Final reclamation must be completed by the date given.

(2) Upon issuance of the permit, the operator shall comply with all commitments required by this rule and with the requirements for the conduct of operations contained in this rule.

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The purpose of proposed (1)(a) is to replace current ARM 17.24.205(2). The proposed text is needed to require sufficient descriptions of the proposed postmining land use or uses. It would give a reasonably complete reference list of common postmining land uses from which an applicant can select the appropriate terms to use in the plan of operation. It specifies that identification of the postmining land use(s) is only needed for the main permit area since it may be too cumbersome for applicants to designate a postmining land use for each land use type crossed by access roads. The zoning compliance requirement set forth in current ARM 17.24.205(2) has been moved to proposed New Rule VIII since this type of requirement is inconsistent with the plan of operation format.

The purpose of proposed (1)(b) is to replace current ARM 17.24.205(3), (4), and (13)(b), and combine the soil and overburden stripping and replacement requirements into one rule. The proposed text is needed to clearly outline necessary soil and overburden handling requirements to ensure that these resources are protected and that an adequate quantity and quality of soil and overburden are available for reclamation. The requirement to provide the method of soil and overburden stripping has been eliminated because operators often do not know the type of equipment that will be available, and this information is not needed to evaluate plan of operations. The statement about using reject fines to supplement soil thickness has been eliminated since this is an obvious alternative. Provisions relating to toxic fines are not needed since such materials are not known to be produced by opencut operations.

The purpose of proposed (1)(c) is to replace current ARM 17.24.205(9). The proposed text eliminates the requirement for a description of the anticipated postmining topography since this requirement has yielded little useful information and is adequately covered by this and other rules. The discussion of backfilling and overburden disposal has been placed in proposed New Rule III. The requirement in current ARM 17.24.205(9)(a) that surfaces must be conducive to the postmining land uses has been eliminated since this factor is addressed in numerous ways by various other rules. The substance of current ARM 17.24.205(9)(b) through (f) is retained but rewritten in a more logical order and with more concise language. Text has been added to clarify that the Department may approve steeper slopes for certain postmining land uses such as building sites or

livestock protection areas, and require water-table-level monitoring to ensure that reclaimed surface elevations are conducive to the postmining land use, be it pond or dry land. Text has been added to allow the Department to approve seasonal ponds since such ponds are valuable wildlife features and, in some cases, may be the most appropriate postmining land use, considering site characteristics. Text has also been added to provide basic reclamation standards for drainageways because drainageways require specialized reclamation techniques. Current ARM 17.24.205(9)(g) has been moved to proposed New Rule IV(1)(e).

The purpose of proposed (1)(d) is to replace current ARM 17.24.205(13)(a). The alleviation of overburden and soil compaction is a major factor in successful mine reclamation. The proposed text is needed to place more emphasis on this subject. It provides more information on when and how to alleviate compaction, and requires minimizing recompaction to promote root penetration and revegetation success.

The purpose of proposed (1)(e) is to clearly outline revegetation requirements. It replaces current ARM 17.24.205(13). The ripping requirements in current ARM 17.24.205(13)(a) have been moved to proposed New Rule IV(1)(d). The soil replacement language has been moved to proposed New Rule IV(1)(b). The proposed section simplifies information requirements. The proposed text is needed to clarify that the responsibility for site protection and management lies with the operator. It includes basic revegetation success criteria that are needed to help operators understand how revegetation success is defined and to set standards for bond or liability release. Because even quality seed lots contain a small percentage of weed seed, the proposed text is needed to change the unrealistic requirement that seed be weed free. The proposed section complements the requirements of the state weed law and requires that the operator submit a copy of the noxious weed control plan with its application.

The purpose of proposed (1)(f) is to replace current ARM 17.24.205(14) and clearly outline necessary timeframe requirements. The requirement for a statement about "concurrent" reclamation is eliminated since the term is not readily understood and "concurrency" is adequately covered by the one-year timeframe. Rather than being left open to a general response, a "date of final reclamation" would seem to be reasonably defined as "month and year." Basic criteria are listed to help an operator determine the date of final reclamation. The inclusive phrase "final reclamation" replaces the limited phrase "grading, replacement of soil material, and revegetation work."

Section (2) is added to ensure that commitments made by applicants and performance standards imposed in this rule are enforceable.

NEW RULE V PLAN OF OPERATION--RECLAMATION BOND (1) A proposed reclamation bond calculation must be submitted as part of the plan of operation on a form provided by the department.

The bond amount must be based on a reasonable estimate of what it would cost the department to reclaim, in accordance with the plan of operation, the anticipated maximum disturbance during the life of the opencut operation, including equipment mobilization and administrative costs. The department shall review the proposed bond calculation and make a final determination.

(2) Federal agencies, the state of Montana, counties, cities and towns are exempt from bond requirements.

AUTH: 82-4-422, MCA
IMP: 82-4-405, 82-4-431, 82-4-432, 82-4-433, 82-4-434, MCA

REASON: The purpose of proposed (1) is to replace current ARM 17.24.205(15). The unnecessary partial list of bonding costs in current ARM 17.24.205(15) is replaced by a reference to the plan of operation. The basic factors considered in bonding are universally understood by the Department and opencut operators, and are included on the Department's reclamation bond worksheet. The proposed rule defines the stage of disturbance for which the bond level is to be determined as the maximum disturbance in order to ensure that the bond is always adequate to pay for reclamation. The auxiliary cost factors for site reclamation--equipment mobilization and administrative costs--are often a large portion of the Department's cost of reclaiming a site, and the proposed rule ensures that these costs are part of the bond.

Section (2) places in the rules the exemption from bonding requirements contained in 82-4-405, MCA.

NEW RULE VI PLAN OF OPERATION--MAPS (1) A site map at a scale of 400 feet to one inch or larger and on a topographic map or air photo base must be submitted as part of the plan of operation. A smaller scale area map drawn on a topographic map or air photo base may also be submitted as part of the plan.

(2) The following existing and proposed main permit area features must be shown and labeled on the site map:

(a) main permit area boundary;

(b) staging, processing facility, and mining areas;

(c) soil, overburden, and mine material stockpile areas;

(d) mined-area backfill and excess overburden and fines disposal sites;

(e) soil and overburden test hole locations;

(f) water system and control structure locations; and

(g) sight and sound barrier locations.

(3) The locations of existing and proposed access roads must be shown and labeled on the site or an area map.

(4) The following existing features in and within 500 feet of access roads and 1,000 feet of the main permit area must be shown and labeled on the site or an area map:

(a) premine land uses including, but not limited to:

(i) water source pond;

(ii) wetland;

(iii) fish pond;
(iv) riparian area;
(v) grassland;
(vi) shrubland;
(vii) woodland;
(viii) special use pasture;
(ix) hayland;
(x) cropland;
(xi) wildlife habitat;
(xii) livestock protection site;
(xiii) recreation site; and
(xiv) residential, commercial, and industrial sites;
(b) reclaimed and unreclaimed surface disturbances;
(c) surface water features, as described in [New Rule II(1)(a)];
(d) vegetative types including, but not limited to:
(i) wetland;
(ii) riparian;
(iii) grassland;
(iv) shrubland;
(v) woodland;
(vi) special use pasture;
(vii) hayland; and
(viii) cropland;
(e) fish and wildlife habitats of special concern, including, but not limited to:
(i) lakes;
(ii) ponds;
(iii) streams;
(iv) wetlands;
(v) riparian areas;
(vi) unique cover areas;
(vii) travel lanes;
(viii) migration routes;
(ix) raptor cliff and nest areas; and
(x) reproductive, nursery, and wintering areas;
(f) residential areas and structures that could be impacted by opencut operations, as described in [New Rule II(1)(e)]; and
(g) non-access roads, fences, utilities, and buffer zones.

(5) The locations of existing and proposed water wells in and within 1,000 feet of the main permit area must be shown and labeled on the site or an area map.

(6) The operator name, site name, legal description, scale, date of drafting, and north arrow must be shown on all plan of operation maps.

(7) Complete and accurate maps must be submitted. The department may require that part or all of the area in and within 500 feet of access roads and 1,000 feet of the main permit area be surveyed to provide sufficient map detail and accuracy.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-434, MCA

REASON: The purpose of proposed New Rule VI is to clearly state what constitutes complete and acceptable maps. Information formerly required in the plan of operation narrative is now required as map information and should make it easier for operators to provide such information.

The two lists in proposed (4) are needed to define the terms that applicants should use to describe premine land uses and vegetative types.

Proposed (7) is needed as a "complete and accurate" maps standard, and to give the Department the authority to require high-quality maps when needed to provide for adequate review of a permit application or to monitor a site.

NEW RULE VII PLAN OF OPERATION--ADDITIONAL INFORMATION AND CERTIFICATION (1) The department may require that an operator provide additional plan of operation information, including, but not limited to:

(a) vegetation;
(b) soil;
(c) surface water;
(d) ground water; and
(e) fish and wildlife surveys and assessments.

(2) The information provided pursuant to (1)(a) through (e) must be gathered, analyzed, and presented according to current professionally accepted practices. Field data must be accompanied by the names and addresses of the parties that collected and analyzed the data, and by a description of the methodologies used to gather and analyze the data.

(3) The plan of operation must conclude with a statement signed and dated by the operator certifying that the statements, descriptions, and information provided apply to the proposed permit area, applicable adjacent areas, and proposed opencut operations, and that the requirements of the plan of operation will be followed unless officially amended through the department.

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, 82-4-436, MCA

REASON: The purpose of proposed (1) and (2) is to provide a means by which the Department may require additional plan of operation information that is necessary to ensure environmental protection and reclamation to achieve the purpose of the Act. It is not always known that additional information of this kind is necessary until an initial revision of an application is conducted and site-specific concerns are identified. The optional soils and fish and wildlife information requirements in current ARM 17.24.204(4), 17.24.207(3), and 17.24.212(4) are consolidated under this proposed rule.

The purpose of proposed (3) is to provide assurance that

the plan of operation is accurate and commits the operator to comply with it.

NEW RULE VIII ZONING COMPLIANCE FOR SAND OR GRAVEL MINING (1) In order to ensure that a proposed sand or gravel operation will be in compliance with local zoning regulations, permit applications for sand or gravel operations and amendment applications for sand or gravel operations that add acreage or change the postmining land use must include a statement from the appropriate local governing body certifying that the proposed mine site and plan of operation comply with local zoning regulations. No application for a permit or such amendment to mine sand or gravel may be approved by the department unless accompanied by such a statement submitted on a form provided by the department.

AUTH: 82-4-422, MCA
IMP: 82-4-431, 82-4-432, MCA

REASON: The purpose of proposed New Rule VIII is to fully implement the zoning compliance requirements of 82-4-432, MCA. It is more appropriate to have this requirement in a separate rule rather than have it attached to the postmining land use section as in current ARM 17.24.205(2).

NEW RULE IX ASSIGNMENT OF PERMITS (1) A person may assume a permit from an operator by submitting an assignment application to the department. Upon receipt of an assignment application, the department shall inspect the permitted site, if necessary, and evaluate the application and existing permit to determine if the requirements of the Act and this subchapter will be satisfied.

(2) The department shall approve an assignment application if it determines that:

(a) the application contains a completed copy of the assignment application form provided by the department, and necessary revisions to the permit. The assignment application form shall include a statement that the applicant assumes responsibility for outstanding permit and site issues;

(b) the application materials and necessary revisions to the permit satisfy the requirements of the Act and this subchapter; and

(c) adequate bond has been submitted. To be adequate, the bond must meet the requirements of [New Rule V] and must include the cost to the department of reclaiming all previously disturbed lands within the permit area.

(3) An assignment does not become effective until approved by the department. The assignee must ensure that it has a complete copy of the approved permit and assignment materials. The assignee is responsible for complying with all terms of the permit, including all provisions of the plan of operation.

(4) An assignment application does not require the payment of an additional fee.

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-432, 82-4-433, 82-4-434, MCA

REASON: The purpose of proposed New Rule IX is to provide the process for assignment of a permit and to ensure that assigned permits are fully enforceable. Assignments (permit transfers) promote efficiency and reduce unnecessary disturbance in mining of opencut mine materials because they provide for alternatives to the opening up of new lands for mining whenever a demand for a mine material in any particular location arises. Site inspections may be necessary and review of the existing permits is necessary as part of the assignment process, because assignment applications often involve old sites and permits that have not been inspected or reviewed for a considerable time; thus assignments offer opportunities to update site conditions and permits in accordance with current standards and legal requirements. Assignment content, review, and approval criteria need to be discussed in a separate rule. This rule is needed to specify assignment requirements, standards for approval, state when an assignment becomes effective, and make sure that the assignee has complete permit information to promote compliance by the assignee.

NEW RULE X PERMIT COMPLIANCE (1) An operator shall comply with the provisions of its permit, this subchapter, and the Act. The department may issue an order requiring abatement of a violation within a reasonable time. The applicant may request an extension of the deadline, giving the reason the extension is necessary, and the department may grant the extension upon finding that good cause for the extension has been shown. The permittee shall comply with the abatement order within the time set in the order or extension.

(2) A permittee may allow another person to mine and process mine materials from the permitted operator’s site, only if the permittee retains control over that person's activities and ensures that no violations of the Act, this subchapter, or the permit occur. If the person violates the provisions of the Act, this subchapter, or the permit, the permittee is responsible for the violation, and the department may require abatement pursuant to (1).

(3) A person who conducts opencut operations at a nonpermitted site and who was obligated to obtain a permit is in violation of 82-4-431, MCA, and the department may issue an order requiring cessation of the operation and may also order abatement of the violation, including reclamation of the site, within a reasonable time. The person may request an extension of the deadline, giving reasons why the extension is necessary, and the department may grant extensions upon a finding that good cause for the extension has been shown. The person shall comply with the abatement order within the time required by the order or extension.

AUTH: 82-4-422, MCA
IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432,

MCA

REASON: The purpose of proposed New Rule X is to enact necessary compliance mandates and accountability standards.

Section 82-4-422, MCA, provides that the Board shall "adopt rules that pertain to opencut mining in order to accomplish the purposes of this part [the Opencut Mining Act]." Section 82-4-402, MCA, provides that one purpose of the Act is to require reclamation of all sites that have been mined for opencut materials. The provisions in New Rule X that require compliance with the Act, rules, and the permit, and that authorize the Department to order abatement, are necessary to ensure this purpose is accomplished.

5. ARM 17.24.204 and 17.24.205, located at pages 17-1926 through 17-1931 of the Administrative Rules of Montana, are being proposed for repeal. The authority section is 82-4-422, MCA, and the implementing sections are 82-4-432 and 82-4-434, MCA. ARM 17.24.215, located at page 17-1937 of the Administrative Rules of Montana, is also being proposed for repeal. The authority section is 82-4-422, MCA, and the implementing sections are 82-4-434, 82-4-435 and 82-4-441, MCA.

The proposed repeal of ARM 17.24.204 is necessary because program experience and changes in the field of mined land reclamation call for a major revision of current ARM 17.24.204 and 17.24.205. The practical way to do such a revision is to delete the current text and replace it with rearranged and updated text (see proposed New Rules I-VII). The information in the proposed new rules is in a more logical order, and also includes necessary additions, deletions, and clarifications. Map information is set forth in proposed New Rule VI, information for premine conditions is set forth in proposed New Rules II and VI, and the option of requiring a soil survey is set forth in proposed New Rule VII.

The proposed repeal of ARM 17.24.205 is necessary because program experience and changes in the field of mined land reclamation call for a major revision of current ARM 17.24.204 and 17.24.205. The practical way to do such a revision is to delete the current text and replace it with rearranged and updated text (see proposed New Rules I-VII). The information in the proposed new rules is in a more logical order, and also includes necessary additions, deletions, and clarifications. The information in ARM 17.24.205 is set forth in proposed New Rules III and IV.

The Board is proposing to repeal ARM 17.24.215 because the Legislature, in Chapter 271, Laws of 1997 and Chapter 325, Laws of 2001, placed in statute the factors that the Department must consider in determining whether to initiate a penalty action and in determining the amount of penalty. The Board is no longer authorized to establish those factors by rule.

6. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of

Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us, to be received no later than 5:00 p.m. November 14, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

8. 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 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 supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

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

BOARD OF ENVIRONMENTAL REVIEW

By: *Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.,
Chairperson

Reviewed by:

John F. North
JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State, October 6, 2003.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 38.5.2401 through 38.5.2407 and the proposed adoption of New Rules I and II, all pertaining to Charges for Raising or Cutting Wires or Cables or Moving Poles to Accommodate Relocation of Structures	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL AND ADOPTION

TO: All Concerned Persons

1. On November 18, 2003, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the repeal of ARM 38.5.2401 through 38.5.2407 and the adoption of New Rules I and II.

2. The PSC 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 PSC no later than 5:00 p.m. on November 12, 2003, to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@state.mt.us.

3. The following rules are proposed to be repealed because they are obsolete as a result of Ch. 359, L. 2003 (HB 337), Montana legislature.

38.5.2401 GENERAL PROHIBITION which can be found on page 38-735 of the Administrative Rules of Montana.
AUTH: 69-3-103, MCA
IMP: 69-4-601, MCA

38.5.2402 PERMITTED CHARGES which can be found on page 38-735 of the Administrative Rules of Montana.
AUTH: 69-3-103, MCA
IMP: 69-4-603, MCA

38.5.2403 DETERMINATION OF NECESSARY AND REASONABLE EXPENSES which can be found on pages 38-735 and 38-736 of the Administrative Rules of Montana.
AUTH: 69-3-103, MCA
IMP: 69-4-603, MCA

38.5.2404 EXCEPTIONS TO NECESSARY AND REASONABLE which can be found on page 38-736 of the Administrative Rules of Montana.
AUTH: 69-3-301, MCA
IMP: 69-4-603, MCA

38.5.2405 AVERAGE COSTS which can be found on page 38-736 of the Administrative Rules of Montana.
AUTH: 69-3-103, MCA
IMP: 69-4-603, MCA

38.5.2406 PREPARATION AND SERVICE OF ESTIMATE which can be found on pages 38-736 and 38-737 of the Administrative Rules of Montana.
AUTH: 69-3-103, MCA
IMP: 69-4-603, MCA

38.5.2407 BIENNIAL REVIEW which can be found on page 38-737 of the Administrative Rules of Montana.
AUTH: 69-3-103, MCA
IMP: 69-4-603, MCA

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

NEW RULE I DEFINITIONS For purposes of this subchapter:
(1) "Cost schedule" includes costs to the utility for work to be done directly by the utility and costs to the utility for work to be done indirectly by the utility through contract;
(2) "Utility" means a public utility (including a regulated telecommunications carrier or provider), a cable television company, and an unregulated telecommunications carrier or provider, but does not include electric cooperatives.

AUTH: 69-3-103, MCA
IMP: 69-4-602 and 69-4-603, MCA

NEW RULE II CHARGES FOR RAISING OR CUTTING OF WIRES OR CABLES OR MOVING POLES TO ACCOMMODATE THE MOVEMENT OF STRUCTURES
(1) By April 1 of each year all utilities owning or controlling wires, cables, or poles in a location which may impede the movement of structures must file a cost schedule for commission review. The cost schedule must be accompanied by a narrative explaining the bases for each of the costs in the cost schedule and work papers demonstrating calculation of each of the costs in the cost schedule. Costs within cost schedules must be on a per unit of time basis (e.g., per hour) unless the particular cost is unsuitable to that basis (e.g., parts, materials).
(2) Cost schedules will become effective on an interim (temporary) basis no later than 30 days following the date filed with the commission unless the commission rejects the cost schedule on the basis that it appears the schedule includes costs that are above cost. The commission may notice cost schedules to the public and interested persons, allowing for intervention, discovery, opposing testimony, and hearing.

(3) The person moving the structure is not responsible for costs resulting from delays caused by a utility crew, a government crew, or force majeure.

AUTH: 69-3-103, MCA
IMP: 69-4-602 and 69-4-603, MCA

5. Repeal of the existing rules is necessary because they are obsolete as a result of Ch. 359, L. 2003 (HB 337). Adoption of new rules is necessary to identify or clarify applicability and substance of cost schedules and to establish a procedure for cost schedules.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than November 18, 2003, or may be submitted to the PSC through the PSC's web-based comment form at http://psc.state.mt.us/PublicComment/PublicComment.htm no later than November 18, 2003. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-03.9.3-RUL").

7. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

8. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

9. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Bob Rowe
Bob Rowe, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE October 6, 2003

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 38.5.2202 and 38.5.2302, pertaining to Pipeline Safety, ARM 38.5.1010 and 38.5.2101, pertaining to the National Electric Safety Code, and ARM 38.5.2102, pertaining to the American National Standards Institute	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 18, 2003, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment of ARM 38.5.2202, 38.5.2302, 38.5.1010, 38.5.2101, and 38.5.2102.

2. The PSC 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 PSC no later than 5:00 p.m. on November 12, 2003, to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@state.mt.us.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission hereby adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before ~~October 31, 2002~~ October 31, 2003. A copy of the referenced regulations may be obtained from DOT, Research and Special Programs Administration, Western Region, Pipeline Safety, 12600 W. Colfax Ave., Suite A-250, Lakewood, Colorado 80215-3736, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter the commission hereby adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before ~~October 31, 2002~~ October 31, 2003. A copy of the referenced CFR~~'~~s is available from the DOT, Research and Special Programs Administration, Western Region, Pipeline Safety, 12600 W. Colfax Ave., Suite A-250, Lakewood, Colorado 80215-3736, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

38.5.1010 INCORPORATION BY REFERENCE OF NATIONAL ELECTRICAL SAFETY CODE (1) Pursuant to 69-4-201, MCA, the commission is empowered to implement and enforce construction standards for utility lines and facilities and for that purpose the commission hereby adopts and incorporates by reference the ~~1997~~ 2002 edition of the National Electrical Safety Code (NESC). A copy of the NESC may be obtained from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, New York 10036, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-4-201, MCA
IMP: 69-4-201, MCA

38.5.2101 ELECTRIC UTILITY LINE AND FACILITY MAINTENANCE -- MINIMUM STANDARDS (1) Each public utility providing electric service subject to the jurisdiction of the commission shall, at the minimum, maintain its electric utility lines and facilities pursuant to the national electrical safety code as that code is identified in 69-4-201, MCA, the effective edition of which is designated ~~by statute or rule~~ at ARM 38.5.1010.

(2) remains the same.

AUTH: 69-3-103, MCA
IMP: 69-3-108 and 69-4-201, MCA

38.5.2102 ELECTRIC UTILITY NOMINAL VOLTAGE AND PERMISSIBLE RANGE OF VARIANCE (1) The standards of product and service for each public utility providing electric service subject to the jurisdiction of the commission shall, whether established by ordered tariff provision or administrative rule, allow for a nominal voltage and permissible range of variation as specified in American National Standards Institute (ANSI) C84.1 1995. A copy of ANSI C84.1 may be obtained from the American National Standards Institute, ~~11 West 42nd Street, 13th Floor~~ Operations, 25 West 43rd Street, 4th Floor, New York, New York 10036, or may be reviewed at the Public Service Commission Offices, 1701

Prospect Avenue, Helena, Montana 59620-2601.

(2) remains the same.

AUTH: 69-3-103, MCA
IMP: 69-3-108, MCA

4. Amendment (annual update) of ARM 38.5.2202 and 38.5.2302 is necessary to allow the PSC to administer the most recent version of federal rules applicable in the PSC's administration of all federal aspects of Montana's pipeline safety programs. Amendment (periodic update) of ARM 38.5.1010 is required by 69-4-201(2), MCA, and necessary to allow the PSC to administer the most recent version of the National Electric Safety Code. Amendment of ARM 38.5.2101 is necessary to clarify that the Montana-applicable version of the National Electric Safety Code is designated by PSC rule. Amendment (periodic update) of ARM 38.5.2102 is necessary to reflect the new address at which interested persons may obtain copies of American National Standards Institute standards.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than November 18, 2003, or may be submitted to the PSC through the PSC's web-based comment form at http://psc.state.mt.us/PublicComment/PublicComment.htm no later than November 18, 2003. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-03.9.4-RUL").

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@state.mt.us, or may be made by completing a request form

at any rules hearing held by the PSC.

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

/s/ Bob Rowe
Bob Rowe, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE October 6, 2003

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 38.5.8201, 38.5.8202, and 38.5.8226 and the proposed adoption of New Rules I and II, all pertaining to the Electric Utility Industry Restructuring and Customer Choice Act, Minimum Filing Requirements, Advanced Approval Applications, and Fees	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On November 25, 2003, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Ave., Helena, Montana, to consider the proposed amendment of ARM 38.5.8201, 38.5.8202, and 38.5.8226 and adoption of New Rules I and II.

2. The PSC 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 PSC no later than 5:00 p.m. on November 18, 2003, to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@state.mt.us.

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

38.5.8201 INTRODUCTION AND APPLICABILITY (1) remains the same.

(2) A DSU should thoroughly document its default supply portfolio planning processes, resource procurement processes and management decision-making so that it can fully demonstrate to the commission and stakeholders the prudence of default supply-related costs and/or justify requests for advanced approval of power purchase agreements. A DSU should routinely communicate with the commission and stakeholders regarding on-going default supply portfolio planning and resource procurement activities.

(3) These guidelines will provide the basis for commission review and consideration of the prudence of a DSU's default supply resource planning and procurement actions, and are the standards against which the commission will evaluate the reasonableness of power supply agreements filed as part of a DSU's application for advanced approval. As such, the

guidelines should assist DSUs in making prudent decisions and in fully recovering default supply-related costs. Successful application of the guidelines will require a commitment from the commission, DSUs and stakeholders to honor the spirit and intent of the guidelines.

(4) and (5) remain the same.

AUTH: 69-8-403, MCA
IMP: 69-8-403, MCA

38.5.8202 DEFINITIONS For the purpose of this subchapter, the following definitions are applicable:

(1) through (7)(c) remain the same.

(8) "Pre-filing communication" means, with respect to an application by a DSU for advanced approval, informal information exchange, including oral dialogue and written discovery, between the DSU and members of its stakeholder advisory committee, the Montana consumer counsel, other stakeholders and commission staff that occurs after the DSU files a notice of intent to request advanced approval pursuant to [New Rule I] up to the date the DSU files an application for advanced approval.

(8) and (9) remain the same, but are renumbered (9) and (10).

AUTH: 69-8-403, MCA
IMP: 69-8-403, MCA

38.5.8226 DEFAULT SUPPLY RESOURCE PLANNING AND PROCUREMENT FILINGS (1) A DSU must file a comprehensive, long-term portfolio management and resource procurement plan by December 15 in each odd-numbered year.

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

AUTH: 69-8-403, MCA
IMP: 69-8-403, MCA

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

NEW RULE I MINIMUM FILING REQUIREMENTS FOR DSU APPLICATIONS FOR ADVANCED APPROVAL (1) If a DSU intends to file an application for advanced approval of a power purchase agreement, it must notify the commission and the Montana consumer counsel far enough in advance of filing to accommodate adequate pre-filing communication. If the power purchase contract will result from a competitive solicitation, notice must be provided before the DSU issues a request for proposals. For opportunity resources, the DSU should provide notice immediately upon a determination by the DSU that a real and viable opportunity exists and should be pursued.

(2) An application by a DSU for advanced approval of a power purchase agreement must incorporate by reference the

DSU's most recent long-term resource plan, must include the DSU's most recent three year action plan, and must provide:

(a) a complete explanation and justification of all changes, if any, to the DSU's most recent long-term resource plan and three year action plan, including how the DSU has responded to all commission written comments on the long-term plan;

(b) a copy of the proposed power purchase agreement, including all appendices and attachments, if any;

(c) testimony and supporting work papers demonstrating the need for the resource/electricity supply product(s) underlying the power purchase agreement;

(d) testimony and supporting work papers demonstrating that the resource/electricity supply product(s) underlying the power purchase agreement:

(i) is in the public interest;

(ii) will facilitate achieving the goals and objectives of these guidelines; and

(iii) complies with all resource procurement guidelines in this subchapter;

(e) if the power purchase agreement resulted from a competitive solicitation, copies of:

(i) the DSU's request for proposals;

(ii) all bids received;

(iii) testimony and work papers demonstrating all due diligence and bid evaluation conducted by the DSU, including the application of bid rating mechanisms and management judgment;

(f) testimony and supporting work papers demonstrating that the price, term and quantity associated with the power purchase agreement are reasonable and in the public interest;

(g) thorough explanation and justification for any other terms in the power purchase agreement for which the DSU is requesting advanced approval;

(h) testimony describing all pre-filing communication;

(i) thorough explanation and justification for any request for a commission decision less than 180 days from the date the DSU's application is filed including a specific plan for ensuring adequate due process; and

(j) testimony and supporting documentation related to any advice received from the DSU's stakeholder advisory committee regarding the power purchase agreement or the underlying resource/electricity product(s) and actions taken or not taken by the DSU in response to such advice.

AUTH: 69-8-403 and 69-8-419, MCA
IMP: 69-8-403 and 69-8-419, MCA

NEW RULE II CONSULTANT FEES (1) When the commission engages independent consultants or advisory services to evaluate a utility's default supply resource procurement plans and proposed power supply purchase agreements pursuant to 69-8-421, MCA, the commission will charge the default supplier a fee commensurate with the costs of the consultant or advisory

services. The default supplier, at the commission's direction, will deposit the fee into the commission's account in the special revenue fund pursuant to 69-8-421, MCA. The initial fee charged to the default supplier will be based upon the commission's estimate of costs for the consultant or advisory services. The commission may revise the fee amount as the actual costs become known.

AUTH: 69-8-403, MCA
IMP: 69-1-114 and 69-8-421, MCA

5. Rationale: The amendments and new rules are reasonably necessary to comply with the Electric Utility Industry Restructuring and Customer Choice Act (Title 69, Ch. 8, MCA) as modified by Ch. 509, L. 2003 (SB 247) which requires the PSC to promulgate rules, by December 31, 2003, to guide the default supply resource planning and procurement process. Such required guidance necessarily involves addition of definitions, minimum filing requirements for default supplier advanced approval requests regarding proposed power supply purchase agreements, and procedures pertaining to fees.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than November 18, 2003, or may be submitted to the PSC through the PSC's web-based comment form at http://psc.state.mt.us/PublicComment/PublicComment.htm no later than November 18, 2003. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-03.10.5-RUL.")

7. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

8. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

9. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public

Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Bob Rowe
Bob Rowe, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 6, 2003.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 42.35.101, 42.35.102, 42.35.103, 42.35.104, 42.35.201, 42.35.202, 42.35.203, 42.35.204, 42.35.211, 42.35.212, 42.35.213, 42.35.214, 42.35.221, 42.35.222, 42.35.231, 42.35.241, 42.35.242, 42.35.243, 42.35.244, 42.35.301, 42.35.302, 42.35.311, 42.35.312, 42.35.316, 42.35.317, 42.35.321, 42.35.322, 42.35.323, 42.35.331, 42.35.332, 42.35.333, 42.35.334, 42.35.335, 42.35.336, 42.35.337, 42.35.341, 42.35.342, 42.35.343, 42.35.401, 42.35.405, 42.35.501, 52.35.502, 52.35.503, 42.35.504, 42.35.505, 42.35.506, 42.35.507, 42.35.508, 42.35.509, 42.35.510, 42.35.511, 42.35.512, 42.35.513, 42.35.514, 42.35.515, 42.35.516, 42.35.517, 42.35.518, 42.35.519, 42.35.520, 42.36.101, 42.36.102, 42.36.103, 42.36.104, 42.36.105, 42.36.201, 42.36.202, 42.36.203, 42.36.204, 42.36.205, 42.36.211, 42.36.212, 42.36.301, 42.36.311, 42.36.312, 42.36.313, 42.36.314, 42.36.315, 42.36.401, 42.36.402, 42.36.403, 42.36.404, 42.36.405, 42.36.406, 42.36.407, 42.36.408, 42.36.501, 42.36.502, 42.36.601, 42.36.602, and 42.36.603 relating to inheritance and estate taxes	)	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 12, 2003, the department proposes to repeal the rules listed above for Title 42, chapters 35 and 36, relating to inheritance and estate taxes. The department is proposing to repeal all of the remaining rules in chapters 35 and 36 because during the May 2000 Special Session, the Fifty-sixth Legislature enacted House Bill 7, which placed an initiative on the November 2000 ballot which sought voter approval to repeal the state inheritance tax laws. That initiative passed and the statutes supporting these rules were repealed. Therefore, these rules are no longer applicable and should be repealed.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to

participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m. on October 27, 2003, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; e-mail canderson@state.mt.us.

3. The department proposes to repeal the following rules:

42.35.101 DEFINITIONS which can be found on page 42-3505 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. Title 72, chapter 16, and Sec. 72-16-308, MCA

42.35.102 DETERMINATION OF DOMICILE which can be found on page 42-3505 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Title 72, chapter 16, MCA

42.35.103 DETERMINATION OF SITUS which can be found on page 42-3505 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Title 72, chapter 16, MCA

42.35.104 TRANSFER OF ASSETS -- WAIVER which can be found on page 42-3506 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-304, 72-16-313, and 72-16-433, MCA, and Title 72, chapter 16, part 7, MCA

42.35.201 PROPERTY SUBJECT TO TAX which can be found on page 42-3511 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-301, MCA

42.35.202 PROPERTY OF RESIDENT OWNERS which can be found on page 42-3511 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-301, MCA

42.35.203 PROPERTY OF NONRESIDENT OWNERS which can be found on page 42-3511 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 76-16-201, MCA
IMP: Sec. 72-16-301, MCA

42.35.204 EXCEPTIONS which can be found on page 42-3512 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-312, MCA

42.35.211 TRANSFERS IN CONTEMPLATION OF DEATH which can be found on page 42-3515 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-301, MCA

42.35.212 BURDEN OF PROOF which can be found on page 42-3515 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-301, MCA

42.35.213 GIFTS which can be found on page 42-3515 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-301, MCA

42.35.214 DETERMINATION OF TRANSFEROR'S INTENT which can be found on page 42-3516 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-301, MCA

42.35.221 TRANSFERS UNDER POWER OF APPOINTMENT which can be found on page 42-3521 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-302, MCA

42.35.222 LIABILITY FOR TAX which can be found on page 42-3521 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-302, MCA

42.35.231 TRANSFER OF JOINT INTEREST PROPERTY which can be found on page 42-3525 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-303, MCA

42.35.241 TRANSFER OF INSURANCE PROCEEDS which can be found on page 42-3531 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-304, MCA

42.35.242 DEBTS SATISFIED BY INSURANCE PROCEEDS which can be found on page 42-3531 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-304, MCA

42.35.243 EFFECT OF MAKING PROCEEDS PAYABLE TO DIFFERENT TRANSFEREES which can be found on page 42-3531 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA

IMP: Sec. 72-16-304, MCA

42.35.244 ANNUITY PROCEEDS AND MATURED ENDOWMENTS which can be found on page 42-3531 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-304, MCA

42.35.301 TIME OF IMPOSITION which can be found on page 42-3541 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-307, MCA

42.35.302 TRANSFER DATES which can be found on page 42-3541 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-306, MCA

42.35.311 VALUATION OF PROPERTY which can be found on page 42-3545 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-308, MCA

42.35.312 DETERMINATION OF CLEAR MARKET VALUE which can be found on page 42-3545 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-308, MCA

42.35.316 ORDINARY EXPENSES OF ADMINISTRATION which can be found on page 42-3546 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-308, MCA

42.35.317 LIMITED, FUTURE, AND CONTINGENT ESTATES which can be found on page 42-3547 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-417, MCA

42.35.321 VALUATION OF REAL ESTATE which can be found on page 42-3551 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-308, MCA

42.35.322 VALUATION OF LEASEHOLDS which can be found on page 42-3551 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-308, MCA

42.35.323 VALUATION OF GROWING CROPS which can be found on page 42-3515 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA

IMP: Sec. 72-16-308, MCA

42.35.331 VALUATION OF STOCKS AND BONDS which can be found on page 42-3555 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-308, MCA

42.35.332 SECURITIES TRADED ON OPEN MARKETS which can be found on page 42-3555 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-308, MCA

42.35.333 USE OF BID AND ASK PRICES which can be found on page 42-3555 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-308, MCA

42.35.334 INCOMPLETE PRICE INFORMATION which can be found on page 42-3556 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-308, MCA

42.35.335 SECURITIES LISTED ON SEVERAL EXCHANGES which can be found on page 42-3556 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-308, MCA

42.35.336 UNTRADED AND CLOSELY HELD SECURITIES which can be found on page 42-3556 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-308, MCA

42.35.337 SHARES IN OPEN-ENDED INVESTMENT COMPANIES which can be found on page 42-3557 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-308, MCA

42.35.341 VALUATION OF CASH, NOTES, AND ACCOUNTS RECEIVABLE which can be found on page 42-3561 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-308, MCA

42.35.342 VALUATION OF INSURANCE which can be found on page 42-3561 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-308, MCA

42.35.343 VALUATION OF ANNUITIES which can be found on page 42-3561 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA

IMP: Sec. 72-16-308, MCA

42.35.401 IMPOSITION OF ESTATE TAX which can be found on page 42-3571 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, 72-16-201, and 72-16-902, MCA
IMP: Sec. 72-16-904, 72-16-905, and 72-16-909, MCA

42.35.405 IMPOSITION OF GENERATION-SKIPPING TRANSFER which can be found on page 42-3571 of the Administrative Rules of Montana.
AUTH: Sec. 72-16-1107, MCA
IMP: Sec. 72-16-1001 through 72-16-1006, MCA

42.35.501 ELECTION OF ALTERNATE VALUATION which can be found on page 42-3581 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-333 and 72-16-334, MCA

42.35.502 ELECTIONS TO SPECIALLY VALUE LESS THAN ALL QUALIFIED REAL PROPERTY INCLUDED IN AN ESTATE which can be found on page 42-3581 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, 72-16-337 MCA
IMP: Sec. 72-16-336, MCA

42.35.503 TIME AND MANNER OF MAKING ELECTION which can be found on page 42-3582 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-331 and 72-16-338, MCA

42.35.504 AGREEMENT TO SPECIAL VALUATION BY PERSONS WITH AN INTEREST IN PROPERTY which can be found on page 42-3583 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-333, MCA

42.35.505 MATERIAL PARTICIPATION REQUIREMENTS which can be found on page 42-3583 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-331(8), MCA

42.35.506 TYPES OF QUALIFIED PROPERTY which can be found on page 42-3584 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-331(11) and 72-16-453, MCA

42.35.507 PERIOD MATERIAL PARTICIPATION MUST LAST which can be found on page 42-3584 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-331, MCA

42.35.508 PERIOD PROPERTY MUST BE OWNED BY DECEDENT AND FAMILY MEMBERS which can be found on page 42-3585 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-331, MCA

42.35.509 REQUIRED ACTIVITIES - IN GENERAL which can be found on page 42-3586 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-331, MCA

42.35.510 SPECIAL RULES FOR CORPORATION, PARTNERSHIPS AND TRUSTS which can be found on page 42-3587 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-337 and 72-16-453, MCA

42.35.511 METHOD OF VALUING FARM REAL ESTATE which can be found on page 42-3588 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-335, MCA

42.35.512 GROSS CASH RENTAL which can be found on page 42-3589 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-336, MCA

42.35.513 DOCUMENTATION REQUIRED OF PERSONAL REPRESENTATIVE which can be found on page 42-3589 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-331 and 72-16-337, MCA

42.35.514 CASH RENTALS - ARM'S LENGTH TRANSACTION REQUIRED which can be found on page 42-3590 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-336, MCA

42.35.515 RENT COMPARABLES which can be found on page 42-3590 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-336, MCA

42.35.516 COMPARABLE REAL PROPERTY which can be found on page 42-3590 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-335, MCA

42.35.517 ADJUSTMENT-RENT which can be found on page 42-3590 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-336, MCA

42.35.518 TAX DEDUCTION which can be found on page 42-3591 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-335, MCA

42.35.519 COMPARABLE REAL PROPERTY DEFINED which can be found on page 42-3591 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-335, MCA

42.35.520 DETERMINATION OF INTEREST RATE IN CAPITALIZATION FORMULA which can be found on page 42-3592 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-337, MCA
IMP: Sec. 72-16-335, MCA

42.36.101 TAXABLE VALUE which can be found on page 42-3605 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-321, MCA

42.36.102 PRIMARY RATES which can be found on page 42-3605 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-321, MCA

42.36.103 TERMINOLOGY which can be found on page 42-3605 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-321, MCA

42.36.104 CREDIT ALLOWANCE which can be found on page 42-3606 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-317, MCA

42.36.105 TAX CREDIT which can be found on page 42-3606 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-318, MCA

42.36.201 GENERAL EXEMPTIONS which can be found on page 42-3611 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-311 through 72-16-313, 72-16-316, and 72-16-318, MCA

42.36.202 TOTALLY EXEMPT TRANSFERS which can be found on page 42-3611 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-312, MCA

42.36.203 EXEMPTION FOR TANGIBLE PERSONAL PROPERTY OUTSIDE MONTANA which can be found on page 42-3612 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-316, MCA

42.36.204 EXEMPTION FOR INTANGIBLE PERSONAL PROPERTY OF NONRESIDENTS which can be found on page 42-3612 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-801, MCA

42.36.205 TREATMENT OF PROPERTY WITH SITUS BOTH WITHIN AND OUTSIDE MONTANA which can be found on page 42-3612 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-311 through 72-16-313, 72-16-316, and 72-16-318, MCA

42.36.211 APPLICATION OF EXEMPTIONS which can be found on page 42-3615 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-313, MCA

42.36.212 EXEMPTION AMOUNTS which can be found on page 42-3615 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-313, MCA

42.36.301 DUE DATE -- LIEN which can be found on page 42-3621 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-431, 72-16-432, and 72-16-438, MCA

42.36.311 DEFERRAL OF TAX which can be found on page 42-3625 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-438, MCA

42.36.312 REQUEST FOR DEFERRAL -- FORM which can be found on page 42-3625 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-438, MCA

42.36.313 TIME FOR MAKING REQUEST which can be found on page 42-3625 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-438, MCA

42.36.314 LENGTH OF DEFERRAL -- CONDITIONS which can be found on page 42-3625 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-438, MCA

42.36.315 INTEREST ON DEFERRED PAYMENTS which can be found on page 42-3626 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-438, MCA

42.36.401 SUBMISSION OF DOCUMENTS which can be found on page 42-3631 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-201, 72-16-207, and 72-16-401, MCA

42.36.402 INFORMATION REQUESTS BY DEPARTMENT which can be found on page 42-3631 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-201, 72-16-207, and 72-16-401, MCA

42.36.403 INVENTORY AND APPRAISAL which can be found on page 42-3631 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-3-607, 72-16-201, and 72-16-207, MCA

42.36.404 DESCRIPTION OF NONSPECIFIED PROPERTY which can be found on page 42-3632 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-3-607, 72-16-201, and 72-16-207, MCA

42.36.405 DESCRIPTION OF REAL ESTATE which can be found on page 42-3632 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-3-607, 72-16-201, and 72-16-207, MCA

42.36.406 DESCRIPTION OF STOCKS AND BONDS which can be found on page 42-3633 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-3-607, 72-16-201, and 72-16-207, MCA

42.36.407 DESCRIPTION OF PROMISSORY NOTES which can be found on page 42-3633 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-3-607, 72-16-201, and 72-16-207, MCA

42.36.408 DESCRIPTION OF CONTRACTS which can be found on page 42-3633 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-3-607, 72-16-201, and 72-16-207, MCA

42.36.501 SUBMISSION OF DOCUMENTS which can be found on page 42-3641 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-502 and 72-16-503, MCA

42.36.502 INFORMATION REQUESTS BY DEPARTMENT which can be found on page 42-3641 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-201, 72-16-207, and 72-16-401, MCA

42.36.601 TIME AND MANNER OF ELECTION which can be found on page 42-3651 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-452, MCA

42.36.602 TREATMENT OF DEFICIENCIES which can be found on page 42-3651 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-459, 72-16-462, and 72-16-463, MCA

42.36.603 PROTECTIVE ELECTION which can be found on page 42-3652 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 and 72-16-201, MCA
IMP: Sec. 72-16-438 and 72-16-452, MCA

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805
no later than November 14, 2003.

5. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than November 14, 2003.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. An electronic copy of this Proposal Notice is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Proposal Notice conform to the official version of the Notice, as printed in the Montana

Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Cleo Anderson	/s/ Linda M. Francis
CLEO ANDERSON	LINDA M. FRANCIS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 6, 2003

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 42.21.113, 42.21.115, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.22.1311, and 42.22.1312 relating to personal property and centrally assessed property tax trend tables	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 2, 2003, at 9:00 a.m., a public hearing will be held in the Director's Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.21.113, 42.21.115, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.22.1311, and 42.22.1312 relating to personal property and centrally assessed property tax trend table updates.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., November 17, 2003, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

<u>42.21.113 LEASED AND RENTAL EQUIPMENT</u> (1) Leased or rental equipment that is leased or rented on an hourly, daily, or weekly basis, but is not exempt under 15-6-201(1)(cc), MCA, will be valued in the following manner:

(a) For equipment that has an acquired cost of $0 to $500, the department shall use a four-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 1.

YEAR NEW/ACQUIRED	TRENDED % GOOD
~~2002~~ 2003	70%
~~2001~~ 2002	43%
~~2000~~ 2001	18%
~~1999~~ 2000 and older	9%

(b) For equipment that has an acquired cost of $501 to $1,500, the department shall use a five-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 2.

YEAR NEW/ACQUIRED	TRENDED % GOOD
~~2002~~ 2003	85%
~~2001~~ 2002	69%
~~2000~~ 2001	52%
~~1999~~ 2000	34%
~~1998~~ 1999 and older	20%

(c) For equipment that has an acquired cost of $1,501 to $5,000, the department shall use a 10-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 8.

YEAR NEW/ACQUIRED	TRENDED % GOOD
~~2002~~ 2003	92%
~~2001~~ 2002	85%
~~2000~~ 2001	77%
~~1999~~ 2000	69%
~~1998~~ 1999	60%
~~1997~~ 1998	51%
~~1996~~ 1997	~~42~~ 41%
~~1995~~ 1996	~~33~~ 32%
~~1994~~ 1995	27%
~~1993~~ 1994 and older	23%

(d) For equipment that has an acquired cost of $5,001 to $15,000, the department shall use the trended depreciation schedule for heavy equipment. The schedule will be the same as ARM 42.21.131.

YEAR NEW/ACQUIRED	TRENDED % GOOD
~~2003~~ 2004	80%
~~2002~~ 2003	65%
~~2001~~ 2002	~~52~~ 58%
~~2000~~ 2001	~~47~~ 53%
~~1999~~ 2000	~~49~~ 48%
~~1998~~ 1999	~~43~~ 44%
~~1997~~ 1998	~~42~~ 41%
~~1996~~ 1997	~~38~~ 39%
~~1995~~ 1996	36%
~~1994~~ 1995	~~36~~ 33%
~~1993~~ 1994	~~32~~ 34%
~~1992~~ 1993	~~30~~ 31%

~~1991~~ 1992		~~30~~ 29%
~~1990~~ 1991		~~28~~ 27%
~~1989~~ 1990		~~27~~ 28%
~~1988~~ 1989		~~27~~ 26%
~~1987~~ 1988		~~25~~ 27%
~~1986~~ 1987		~~20~~ 24%
~~1985~~ 1986		~~20~~ 22%
~~1984~~ 1985	and older	20%

(e) For rental video tapes the following schedule will be used:

YEAR NEW/ACQUIRED		TRENDED % GOOD
~~2002~~ 2003		25%
~~2001~~ 2002		15%
~~2000~~ 2001	and older	10%

(2) through (4) remain the same.

(5) This rule is effective for tax years beginning after December 31, ~~2002~~ 2003.

AUTH: Sec. 15-1-201 and 15-23-108, MCA

IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.21.113 to clarify through the trend tables how the department arrives at market value as required by 15-8-111, MCA. Annually, the department updates these schedules so that taxpayers will know the current percentages used by the department when valuing and taxing their property. To determine the market value of personal property, the department has historically used and adopted the concept of trending and depreciation. The method by which trended depreciation schedules are derived is described in the existing rule, and that method is not being changed. The Montana First Judicial District Court indicated in 1986 that the department must publish these trend tables annually, and these amendments are in compliance with that order.

42.21.115 ADJUSTED TAX RATE (1) Beginning with tax year 2004, if the percent growth in inflation-adjusted Montana wage and salary income is 2.85% or greater from the prior year to the base year, as defined in 15-6-138, MCA, the tax rate for class eight property will be reduced by 1%. ~~Each subsequent year, the tax rate for class eight property will be decreased by 1%~~ per year until it reaches 0%. ~~If the inflation-adjusted Montana wage and salary income factor, 2.85%, is not met in year 2004, the tax rate will remain the same as the previous year.~~

(2) ~~The following table illustrates the phase-out of personal property:~~

~~PHASE-OUT OF PERSONAL PROPERTY~~

~~TAX YEAR~~	~~CLASS EIGHT TAX RATE~~
~~1999~~	~~6%~~

~~2000 3%~~
~~2001 3%~~
~~2002 3%~~
~~2003 3%*~~
~~2004 2%~~
~~2005 1%~~
~~2006 0%~~

~~*Tax rate will decrease if the adjusted Montana wage and salary inflation growth is 2.85% or greater.~~ When calculating the percentage growth in inflation-adjusted Montana wage and salary income, the department shall use the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, SA07 (state annual) data series or successor series. If the SA07 or successor series for the appropriate year is not available by October 30th, the department shall use the most recent bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements CA34 data series available.

~~(3) In year 2005 if the inflation factor is met, then the tax rate will decrease by 1% per year. Each subsequent year the tax rate for class eight property will be decreased by 1% per year until it reaches 0%. If the inflation factor is not met in 2005 the same process will be repeated for each succeeding year.~~

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-138, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.21.115 because the 2003 legislature enacted SB 155 which addresses the department's requirement to reduce the tax rate for class eight property by 1% each year if in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income is at least 2.85% from the year prior to the base year. The law further requires the department to make this adjustment by October 30th of each year and use the formula described by the bureau of economic analysis of the United States Department of Commerce. The rule clarifies which data series to use in the calculation.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) The market value for farm machinery and equipment shall be the "average wholesale" value as shown in the Iron Solutions, Northwest Region Official Guide, Fall Edition, for the year previous to the year of the assessment. This guide may be reviewed in the department or purchased from the publisher: North American Equipment Dealers Association, ~~10877 Watson Road, St. Louis, Missouri 63127-1081~~ 1195 Smizer Mill Road, Fenton, Missouri 63026-3480.

(2) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2) through (4) is listed below and shall be used for tax year ~~2003~~ 2004. The schedule is derived by using the guidebook listed in (1) as the data base. The values derived through use of the trended depreciation schedule will approximate average wholesale

value.

YEAR NEW/ACQUIRED	TRENDED % GOOD AVERAGE WHOLESALE
~~2003~~ 2004	80%
~~2002~~ 2003	65%
~~2001~~ 2002	64%
~~2000~~ 2001	~~58~~ 60%
~~1999~~ 2000	~~51~~ 53%
~~1998~~ 1999	~~48~~ 47%
~~1997~~ 1998	~~43~~ 42%
~~1996~~ 1997	~~41~~ 40%
~~1995~~ 1996	~~41~~ 40%
~~1994~~ 1995	~~36~~ 34%
~~1993~~ 1994	33%
~~1992~~ 1993	~~31~~ 32%
~~1991~~ 1992	~~32~~ 31%
~~1990~~ 1991	~~28~~ 29%
~~1989~~ 1990	28%
~~1988~~ 1989	23%
~~1987~~ 1988 and older	20%

(6) remains the same.

(7) This rule is effective for tax years beginning after December 31, ~~2002~~ 2003.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

42.21.131 HEAVY EQUIPMENT (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2), (3), and (4) is listed below and shall be used for tax year ~~2003~~ 2004. The values derived through the use of these percentages approximate the "quick sale" values as calculated in the guidebooks listed in (1).

HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE

YEAR NEW/ACQUIRED	TRENDED % GOOD WHOLESALE
~~2003~~ 2004	80%
~~2002~~ 2003	65%
~~2001~~ 2002	~~52~~ 58%
~~2000~~ 2001	~~47~~ 53%
~~1999~~ 2000	~~49~~ 48%
~~1998~~ 1999	~~43~~ 44%
~~1997~~ 1998	~~42~~ 41%
~~1996~~ 1997	~~38~~ 39%
~~1995~~ 1996	36%
~~1994~~ 1995	~~36~~ 33%
~~1993~~ 1994	~~32~~ 34%

~~1992~~ 1993	~~30~~ 31%
~~1991~~ 1992	~~30~~ 29%
~~1990~~ 1991	~~28~~ 27%
~~1989~~ 1990	~~27~~ 28%
~~1988~~ 1989	~~27~~ 26%
~~1987~~ 1988	~~25~~ 27%
~~1986~~ 1987	~~20~~ 24%
~~1985~~ 1986	~~20~~ 22%
~~1984~~ 1985 and before	20%

(6) This rule is effective for tax years beginning after December 31, ~~2002~~ 2003, and applies to all heavy equipment.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-140, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) through (3) remain the same.

(4) The trended depreciation schedules referred to in (1) through (3) are listed below and shall be used for tax year ~~2003~~ 2004.

SEISMOGRAPH UNIT

TRENDED YEAR/NEW ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD	WHOLESALE FACTOR	WHOLESALE % GOOD
~~2003~~ 2004	100%	1.000	100%	80%	80%
~~2002~~ 2003	85%	1.000	85%	80%	68%
~~2001~~ 2002	69%	~~1.002~~ 1.018	~~69~~ 70%	80%	~~55~~ 56%
~~2000~~ 2001	52%	~~1.012~~ 1.024	53%	80%	43%
~~1999~~ 2000	34%	~~1.028~~ 1.034	35%	80%	28%
~~1998~~ 1999	20%	~~1.033~~ 1.050	21%	80%	17%
~~1997~~ 1998 and older	5%	~~1.044~~ 1.056	5%	80%	4%

SEISMOGRAPH ALLIED EQUIPMENT

YEAR/NEW ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2003~~ 2004	100%	1.000	100%
~~2002~~ 2003	85%	1.000	85%
~~2001~~ 2002	69%	~~1.002~~ 1.018	~~69~~ 70%
~~2000~~ 2001	52%	~~1.012~~ 1.024	53%
~~1999~~ 2000	34%	~~1.028~~ 1.034	35%
~~1998~~ 1999	20%	~~1.033~~ 1.050	21%
~~1997~~ 1998 and older	5%	~~1.044~~ 1.056	5%

(5) This rule is effective for tax years beginning after December 31, ~~2002~~ 2003.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT
(1) and (2) remain the same.
(3) The trended depreciation schedule referred to in (1) and (2) is listed below and shall be used for tax year ~~2003~~ 2004.

OIL AND GAS FIELD PRODUCTION
EQUIPMENT TRENDED DEPRECIATION SCHEDULE

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2003~~ 2004	100%	1.000	100%
~~2002~~ 2003	95%	1.000	95%
~~2001~~ 2002	90%	~~1.002~~ 1.018	~~90~~ 92%
~~2000~~ 2001	85%	~~1.012~~ 1.024	~~86~~ 87%
~~1999~~ 2000	79%	~~1.028~~ 1.034	~~81~~ 82%
~~1998~~ 1999	73%	~~1.033~~ 1.050	~~75~~ 77%
~~1997~~ 1998	68%	~~1.044~~ 1.056	~~71~~ 72%
~~1996~~ 1997	62%	~~1.057~~ 1.066	66%
~~1995~~ 1996	55%	~~1.078~~ 1.080	59%
~~1994~~ 1995	49%	~~1.118~~ 1.101	~~55~~ 54%
~~1993~~ 1994	43%	~~1.140~~ 1.142	49%
~~1992~~ 1993	37%	~~1.155~~ 1.165	43%
~~1991~~ 1992	31%	~~1.164~~ 1.180	~~36~~ 37%
~~1990~~ 1991	26%	~~1.189~~ 1.189	31%
~~1989~~ 1990	23%	~~1.220~~ 1.215	28%
~~1988~~ 1989 and older	20%	~~1.289~~ 1.246	~~26~~ 25%

(4) remains the same.
(5) This rule is effective for tax years beginning after December 31, ~~2002~~ 2003.
AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

42.21.139 WORK-OVER AND SERVICE RIGS (1) through (4) remain the same.
(5) The trended depreciation schedule referred to in (2) and (4) is listed below and shall be used for tax year ~~2003~~ 2004.

SERVICE AND WORKOVER RIG TRENDED DEPRECIATION SCHEDULE

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	WHOLESALE FACTOR	TRENDED WHOLESALE % GOOD
~~2003~~ 2004	100%	1.000	80%	80%
~~2002~~ 2003	92%	1.000	80%	74%
~~2001~~ 2002	84%	~~1.002~~ 1.018	80%	~~67~~ 68%
~~2000~~ 2001	76%	~~1.012~~ 1.024	80%	62%
~~1999~~ 2000	67%	~~1.028~~ 1.034	80%	55%
~~1998~~ 1999	58%	~~1.033~~ 1.050	80%	~~48~~ 49%
~~1997~~ 1998	49%	~~1.044~~ 1.056	80%	41%
~~1996~~ 1997	39%	~~1.057~~ 1.066	80%	33%
~~1995~~ 1996	30%	~~1.078~~ 1.080	80%	26%
~~1994~~ 1995	24%	~~1.118~~ 1.101	80%	21%
~~1993~~ 1994 and older	20%	~~1.140~~ 1.142	80%	18%

(6) This rule is effective for tax years beginning after December 31, ~~2002~~ 2003.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department shall prepare a 10-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule shall be derived from depreciation factors published by Marshall and Swift Publication Company. The "% good" for all drill rigs less than one year old shall be 100%. The trended depreciation schedule for tax year ~~2003~~ 2004 is listed below.

DRILL RIG TRENDED DEPRECIATION SCHEDULE

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2003~~ 2004	100%	1.000	100%
~~2002~~ 2003	92%	1.000	92%
~~2001~~ 2002	84%	~~1.002~~ 1.018	~~84~~ 86%
~~2000~~ 2001	76%	~~1.012~~ 1.024	~~77~~ 78%
~~1999~~ 2000	67%	~~1.028~~ 1.034	69%
~~1998~~ 1999	58%	~~1.033~~ 1.050	~~60~~ 61%
~~1997~~ 1998	49%	~~1.044~~ 1.056	~~51~~ 52%
~~1996~~ 1997	35%	~~1.057~~ 1.066	37%
~~1995~~ 1996	30%	~~1.078~~ 1.080	32%
~~1994~~ 1995	24%	~~1.118~~ 1.101	~~27~~ 26%
~~1993~~ 1994 and older	20%	~~1.140~~ 1.142	23%

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, ~~2002~~ 2003.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

42.21.151 TELEVISION CABLE SYSTEMS (1) through (3) remain the same.

(4) The trended depreciation schedules referred to in (2) and (3) are listed below and shall be in effect for tax year ~~2003~~ 2004.

TABLE 1: FIVE-YEAR "DISHES"

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2002~~ 2003	85%	1.000	85%
~~2001~~ 2002	69%	~~1.004~~ 1.015	~~69~~ 70%
~~2000~~ 2001	52%	~~1.012~~ 1.021	53%
~~1999~~ 2000	34%	1.030	35%
~~1998~~ 1999 and older	20%	~~1.033~~ 1.048	21%

TABLE 2: TEN-YEAR "TOWERS"

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2002~~ 2003	92%	1.000	92%
~~2001~~ 2002	84%	~~1.004~~ 1.015	~~84~~ 85%
~~2000~~ 2001	76%	~~1.012~~ 1.021	~~77~~ 78%
~~1999~~ 2000	67%	1.030	69%
~~1998~~ 1999	58%	~~1.033~~ 1.048	~~60~~ 61%
~~1997~~ 1998	49%	~~1.042~~ 1.052	~~51~~ 52%
~~1996~~ 1997	39%	~~1.059~~ 1.061	41%
~~1995~~ 1996	30%	~~1.075~~ 1.078	32%
~~1994~~ 1995	24%	~~1.114~~ 1.094	~~27~~ 26%
~~1993~~ 1994 and older	20%	~~1.145~~ 1.134	23%

(5) This rule is effective for tax years beginning after December 31, ~~2002~~ 2003.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-140, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

42.21.153 SKI LIFT EQUIPMENT (1) and (2) remain the same.

(3) The depreciation schedules shall be determined by the

life expectancy of the equipment and will normally compensate for the loss in value due to ordinary wear and tear, offset by reasonable maintenance, and ordinary functional obsolescence due to the technological changes during the life expectancy period.

DEPRECIATION TABLE FOR SKI LIFT EQUIPMENT

Installed Cost X Trended Percent Good = Average Market Value

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2002~~ 2003 and older	92%	1.000	92%
~~2001~~ 2002	84%	~~1.004~~ 1.015	~~84~~ 85%
~~2000~~ 2001	76%	~~1.012~~ 1.021	~~77~~ 78%
~~1999~~ 2000	67%	1.030	69%
~~1998~~ 1999	58%	~~1.033~~ 1.048	~~60~~ 61%
~~1997~~ 1998	49%	~~1.042~~ 1.052	~~51~~ 52%
~~1996~~ 1997	39%	~~1.059~~ 1.061	41%
~~1995~~ 1996	30%	~~1.075~~ 1.078	32%
~~1994~~ 1995	24%	~~1.114~~ 1.094	~~27~~ 26%
~~1993~~ 1994	20%	~~1.145~~ 1.134	23%

(a) The taxpayer must initially list with the department:
(i) all equipment by year of installation; and
(ii) installed costs of that equipment.
(b) Each year thereafter, the taxpayer must list with the department:
(i) all additions or deletions from the previous year's list, with installed cost.
(4) This methodology is effective for tax years beginning after December 31, ~~2002~~ 2003.
AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.
(2) The trended depreciation schedules for tax year 2003 are listed below. The categories are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

CATEGORY 1

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2002~~ 2003 and older	70%	1.000	70%
~~2001~~ 2002	45%	~~0.952~~ 0.956	43%
~~2000~~ 2001	20%	~~0.905~~ 0.909	18%
~~1999~~ 2000	10%	~~0.854~~ 0.864	9%

CATEGORY 2

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2002~~ 2003	85%	1.000	85%
~~2001~~ 2002	69%	~~1.006~~ 0.994	69%
~~2000~~ 2001	52%	~~1.008~~ 0.996	52%
~~1999~~ 2000	34%	~~1.010~~ 0.998	34%
~~1998~~ 1999 and older	20%	~~1.008~~ 1.000	20%

CATEGORY 3

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2002~~ 2003	85%	1.000	85%
~~2001~~ 2002	69%	~~0.968~~ 0.989	~~67~~ 68%
~~2000~~ 2001	52%	~~0.953~~ 0.955	50%
~~1999~~ 2000	34%	~~0.940~~ 0.941	32%
~~1998~~ 1999 and older	20%	~~0.916~~ 0.928	18%

CATEGORY 4

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2002~~ 2003	85%	1.000	85%
~~2001~~ 2002	69%	~~1.000~~ 1.003	69%
~~2000~~ 2001	52%	~~0.982~~ 1.004	~~51~~ 52%
~~1999~~ 2000	34%	~~0.950~~ 0.986	~~32~~ 34%
~~1998~~ 1999 and older	20%	~~0.939~~ 0.954	19%

CATEGORY 5

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2002~~ 2003	85%	1.000	85%
~~2001~~ 2002	69%	~~1.001~~ 1.004	69%
~~2000~~ 2001	52%	~~1.008~~ 1.006	52%
~~1999~~ 2000	34%	~~1.014~~ 1.012	34%
~~1988~~ 1999 and older	20%	~~1.017~~ 1.018	20%

CATEGORY 6

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2002~~ 2003	85%	1.000	85%
~~2001~~ 2002	69%	~~1.034~~ 0.997	~~71~~ 69%
~~2000~~ 2001	52%	~~1.079~~ 1.030	~~56~~ 54%
~~1999~~ 2000	34%	~~1.125~~ 1.075	~~38~~ 37%
~~1998~~ 1999 and older	20%	~~1.188~~ 1.121	~~24~~ 22%

CATEGORY 7

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2002~~ 2003	92%	1.000	92%
~~2001~~ 2002	84%	~~1.000~~ 0.999	84%
~~2000~~ 2001	76%	~~1.011~~ 0.999	~~77~~ 76%
~~1999~~ 2000	67%	~~1.019~~ 1.010	68%
~~1998~~ 1999	58%	~~1.027~~ 1.018	~~60~~ 59%
~~1997~~ 1998	49%	~~1.043~~ 1.026	~~51~~ 50%
~~1996~~ 1997	39%	~~1.062~~ 1.041	41%
~~1995~~ 1996	30%	~~1.090~~ 1.061	~~33~~ 32%
~~1994~~ 1995	24%	~~1.114~~ 1.088	~~27~~ 26%
~~1993~~ 1994 and older	20%	~~1.138~~ 1.113	~~23~~ 22%

CATEGORY 8

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
~~2002~~ 2003	92%	1.000	92%
~~2001~~ 2002	84%	~~1.006~~ 1.009	85%
~~2000~~ 2001	76%	~~1.018~~ 1.016	77%
~~1999~~ 2000	67%	~~1.030~~ 1.028	69%
~~1998~~ 1999	58%	~~1.035~~ 1.040	60%
~~1997~~ 1998	49%	~~1.047~~ 1.045	51%
~~1996~~ 1997	39%	~~1.068~~ 1.057	~~42~~ 41%
~~1995~~ 1996	30%	~~1.097~~ 1.078	~~33~~ 32%
~~1994~~ 1995	24%	~~1.124~~ 1.108	27%
~~1993~~ 1994	20%	~~1.152~~ 1.135	23%

(3) This rule is effective for tax years beginning after December 31, ~~2002~~ 2003.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-139, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113.

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) remains the same.

(2) Life expectancies for industrial machinery and equipment are shown in the trend table below.

(a) through (bt) remain the same.

(bu)	Silicon Processing	(23)	15

(bu) through (ce) remain the same but are renumbered (bv) through (cf).

(cg)	Wind Generation	(11)	20

(cf) through (ch) remain the same but are renumbered (ch) through (cj).

(3) Tables 1 through 32 represent the yearly trend factors for each of the categories.

YEAR	TABLE 1 Airplane Mfg.	TABLE 2 Baking	TABLE 3 Bottling	TABLE 4 Brew/Dis.	TABLE 5 Candy Confect.
2002	1.000	1.000	1.000	1.000	1.000
2001	1.001	1.004	1.002	1.004	1.004
2000	1.007	1.016	1.011	1.015	1.016
1999	1.026	1.036	1.030	1.033	1.036
1998	1.027	1.039	1.032	1.039	1.040
1997	1.035	1.050	1.040	1.049	1.051
1996	1.048	1.068	1.056	1.066	1.070
1995	1.062	1.084	1.072	1.086	1.086
1994	1.104	1.128	1.115	1.127	1.131
1993	1.133	1.163	1.144	1.154	1.166
1992	1.151	1.185	1.163	1.172	1.188
1991	1.158	1.201	1.175	1.185	1.204
1990	1.177	1.228	1.197	1.211	1.234
1989	1.203	1.262	1.227	1.246	1.270
1988	1.263	1.331	1.299	1.319	1.343
1987	1.321	1.391	1.361	1.378	1.404
1986	1.335	1.414	1.379	1.396	1.429
1985	1.342	1.439	1.388	1.408	1.455
1984	1.359	1.467	1.406	1.428	1.485
1983	1.396	1.501	1.442	1.464	1.519

YEAR	TABLE 6 Cement Mfg.	TABLE 7 Chemical Mfg.	TABLE 8 Clay Mfg.	TABLE 9 Contractor Eq.	TABLE 10 Creamery/ Dairy
2002	1.000	1.000	1.000	1.000	1.000
2001	1.003	1.002	1.005	1.005	1.004
2000	1.013	1.012	1.016	1.011	1.015
1999	1.030	1.028	1.032	1.029	1.036
1998	1.034	1.033	1.036	1.037	1.040
1997	1.045	1.044	1.047	1.049	1.051
1996	1.058	1.057	1.063	1.069	1.069
1995	1.078	1.078	1.083	1.087	1.087
1994	1.116	1.118	1.121	1.117	1.133
1993	1.141	1.140	1.147	1.145	1.164
1992	1.158	1.155	1.168	1.176	1.183
1991	1.168	1.164	1.180	1.198	1.197
1990	1.191	1.189	1.204	1.227	1.226
1989	1.223	1.220	1.240	1.266	1.262
1988	1.285	1.289	1.304	1.327	1.338
1987	1.330	1.345	1.352	1.370	1.400
1986	1.343	1.359	1.368	1.389	1.423
1985	1.352	1.365	1.380	1.401	1.445
1984	1.372	1.385	1.402	1.418	1.471
1983	1.405	1.422	1.444	1.447	1.505

YEAR	TABLE 11 Elec. Pwr. Eq.	TABLE 12 Elec. Eq. Mfg.	TABLE 13 Cannery/ Fish	TABLE 14 Flour, Cer. Feed	TABLE 15 Cannery/ Fruit
2002	1.000	1.000	1.000	1.000	1.000

2001	0.994	0.996	1.004	1.003	1.005
2000	1.001	1.003	1.015	1.014	1.015
1999	1.021	1.022	1.035	1.034	1.037
1998	1.016	1.018	1.038	1.039	1.040
1997	1.018	1.023	1.049	1.049	1.050
1996	1.023	1.032	1.068	1.065	1.071
1995	1.032	1.044	1.084	1.082	1.085
1994	1.086	1.094	1.128	1.125	1.126
1993	1.109	1.120	1.165	1.155	1.165
1992	1.116	1.132	1.188	1.174	1.193
1991	1.112	1.133	1.205	1.185	1.214
1990	1.119	1.146	1.233	1.209	1.242
1989	1.138	1.169	1.267	1.241	1.277
1988	1.207	1.235	1.339	1.309	1.349
1987	1.285	1.307	1.401	1.366	1.410
1986	1.295	1.321	1.424	1.384	1.435
1985	1.302	1.326	1.448	1.400	1.459
1984	1.314	1.343	1.475	1.422	1.484
1983	1.348	1.381	1.512	1.454	1.521

YEAR	TABLE 16 Packing/ Fruit	TABLE 17 Laundry/ Clean	TABLE 18 Logging Eq.	TABLE 19 Packing/ Meat	TABLE 20 Metal Work
2002	1.000	1.000	1.000	1.000	1.000
2001	1.007	1.003	1.004	1.006	1.000
2000	1.015	1.012	1.009	1.016	1.007
1999	1.037	1.031	1.028	1.036	1.021
1998	1.041	1.032	1.032	1.041	1.020
1997	1.050	1.040	1.040	1.052	1.030
1996	1.075	1.057	1.057	1.071	1.043
1995	1.088	1.074	1.071	1.090	1.062
1994	1.122	1.112	1.106	1.131	1.103
1993	1.163	1.142	1.137	1.164	1.131
1992	1.198	1.164	1.162	1.186	1.147
1991	1.223	1.176	1.180	1.204	1.157
1990	1.251	1.200	1.204	1.234	1.182
1989	1.288	1.234	1.237	1.272	1.214
1988	1.357	1.299	1.294	1.342	1.274
1987	1.411	1.353	1.340	1.396	1.329
1986	1.434	1.373	1.358	1.419	1.346
1985	1.452	1.385	1.368	1.442	1.355
1984	1.473	1.406	1.385	1.471	1.380
1983	1.512	1.447	1.419	1.509	1.417

YEAR	TABLE 21 Mine Mill	TABLE 22 Paint Mfg.	TABLE 23 Petroleum	TABLE 24 Printing	TABLE 25 Paper Mfg.
2002	1.000	1.000	1.000	1.000	1.000
2001	1.009	1.003	1.007	0.998	1.005
2000	1.016	1.012	1.020	1.007	1.011
1999	1.033	1.031	1.035	1.021	1.032
1998	1.038	1.034	1.040	1.022	1.034
1997	1.049	1.044	1.054	1.027	1.043
1996	1.066	1.059	1.071	1.044	1.064

1995	1.083	1.078	1.093	1.059	1.078
1994	1.116	1.120	1.133	1.099	1.115
1993	1.147	1.147	1.156	1.126	1.149
1992	1.172	1.166	1.167	1.143	1.175
1991	1.191	1.176	1.176	1.147	1.191
1990	1.219	1.200	1.207	1.164	1.214
1989	1.257	1.232	1.237	1.182	1.246
1988	1.324	1.301	1.301	1.247	1.314
1987	1.367	1.358	1.355	1.306	1.368
1986	1.378	1.375	1.359	1.327	1.386
1985	1.385	1.383	1.360	1.341	1.395
1984	1.402	1.403	1.375	1.359	1.411
1983	1.430	1.442	1.400	1.404	1.451

YEAR	TABLE 26 Refriger-ation	TABLE 27 Rubber	TABLE 28 Steam Power	TABLE 29 Textile	TABLE 30 Ware-Housing
2002	1.000	1.000	1.000	1.000	1.000
2001	1.005	1.000	1.000	1.002	1.003
2000	1.015	1.009	1.009	1.010	1.009
1999	1.035	1.024	1.024	1.025	1.027
1998	1.039	1.028	1.025	1.027	1.028
1997	1.049	1.039	1.033	1.035	1.032
1996	1.066	1.054	1.043	1.053	1.049
1995	1.085	1.073	1.060	1.067	1.058
1994	1.126	1.111	1.103	1.100	1.088
1993	1.156	1.138	1.126	1.128	1.124
1992	1.178	1.160	1.139	1.150	1.151
1991	1.192	1.171	1.144	1.164	1.167
1990	1.218	1.198	1.163	1.190	1.187
1989	1.251	1.231	1.194	1.220	1.215
1988	1.320	1.295	1.265	1.282	1.270
1987	1.374	1.346	1.324	1.336	1.310
1986	1.394	1.368	1.339	1.358	1.328
1985	1.405	1.378	1.345	1.373	1.338
1984	1.426	1.403	1.366	1.393	1.353
1983	1.468	1.447	1.411	1.433	1.384

YEAR	TABLE 31 Wood Working	TABLE 32 Glass Mfg.
2002	1.000	1.000
2001	1.006	1.002
2000	1.007	1.012
1999	1.024	1.031
1998	1.026	1.033
1997	1.030	1.042
1996	1.056	1.056
1995	1.067	1.074
1994	1.097	1.117
1993	1.134	1.143
1992	1.173	1.159
1991	1.196	1.166
1990	1.216	1.186

~~1989~~	~~1.249~~	~~1.216~~
~~1988~~	~~1.318~~	~~1.284~~
~~1987~~	~~1.371~~	~~1.341~~
~~1986~~	~~1.390~~	~~1.357~~
~~1985~~	~~1.399~~	~~1.364~~
~~1984~~	~~1.417~~	~~1.381~~
~~1983~~	~~1.456~~	~~1.418~~

YEAR	TABLE 1 Airplane Mfg.	TABLE 2 Baking	TABLE 3 Bottling	TABLE 4 Brew/Dis.	TABLE 5 Candy Confect.
2003	1.000	1.000	1.000	1.000	1.000
2002	1.016	1.015	1.016	1.016	1.015
2001	1.020	1.022	1.021	1.022	1.021
2000	1.027	1.033	1.030	1.034	1.033
1999	1.046	1.054	1.050	1.053	1.054
1998	1.047	1.057	1.052	1.058	1.057
1997	1.055	1.068	1.060	1.069	1.069
1996	1.068	1.087	1.076	1.086	1.088
1995	1.083	1.103	1.093	1.107	1.105
1994	1.126	1.148	1.136	1.148	1.151
1993	1.155	1.183	1.166	1.175	1.186
1992	1.173	1.206	1.185	1.194	1.208
1991	1.181	1.222	1.197	1.207	1.225
1990	1.200	1.249	1.220	1.234	1.254
1989	1.226	1.283	1.251	1.269	1.291
1988	1.287	1.354	1.324	1.344	1.366
1987	1.346	1.415	1.387	1.390	1.428
1986	1.362	1.439	1.405	1.422	1.453
1985	1.368	1.464	1.415	1.434	1.480
1984	1.386	1.492	1.433	1.455	1.510

YEAR	TABLE 6 Cement Mfg.	TABLE 7 Chemical Mfg.	TABLE 8 Clay Mfg.	TABLE 9 Contractor Eq.	TABLE 10 Creamery/ Dairy
2003	1.000	1.000	1.000	1.000	1.000
2002	1.019	1.018	1.018	1.014	1.015
2001	1.025	1.024	1.025	1.022	1.021
2000	1.035	1.034	1.036	1.028	1.033
1999	1.053	1.050	1.053	1.046	1.054
1998	1.057	1.056	1.057	1.054	1.058
1997	1.068	1.066	1.068	1.066	1.069
1996	1.081	1.080	1.085	1.087	1.087
1995	1.101	1.101	1.106	1.105	1.106
1994	1.140	1.142	1.144	1.136	1.152
1993	1.166	1.165	1.171	1.164	1.184
1992	1.184	1.180	1.192	1.196	1.203
1991	1.193	1.189	1.204	1.218	1.218
1990	1.217	1.215	1.229	1.247	1.247
1989	1.250	1.246	1.265	1.288	1.283
1988	1.313	1.317	1.331	1.349	1.360
1987	1.359	1.374	1.379	1.394	1.424
1986	1.372	1.389	1.396	1.413	1.447
1985	1.382	1.395	1.408	1.424	1.469

1984	1.402	1.415	1.431	1.442	1.496

YEAR	TABLE 11 Elec. Pwr. Eq.	TABLE 12 Elec. Eq. Mfg.	TABLE 13 Cannery/ Fish	TABLE 14 Flour, Cer. Feed	TABLE 15 Cannery/ Fruit
2003	1.000	1.000	1.000	1.000	1.000
2002	0.014	0.015	1.016	1.015	1.014
2001	1.011	1.014	1.023	1.021	1.021
2000	1.018	1.021	1.034	1.032	1.032
1999	1.038	1.040	1.054	1.052	1.053
1998	1.033	1.036	1.057	1.057	1.057
1997	1.035	1.041	1.068	1.067	1.066
1996	1.040	1.050	1.088	1.083	1.088
1995	1.049	1.062	1.104	1.100	1.102
1994	1.104	1.113	1.149	1.144	1.144
1993	1.127	1.140	1.186	1.175	1.184
1992	1.135	1.152	1.209	1.194	1.212
1991	1.131	1.154	1.227	1.205	1.233
1990	1.138	1.167	1.255	1.230	1.262
1989	1.157	1.190	1.291	1.262	1.298
1988	1.228	1.257	1.364	1.322	1.371
1987	1.307	1.330	1.426	1.390	1.432
1986	1.316	1.344	1.451	1.408	1.458
1985	1.324	1.350	1.474	1.424	1.482
1984	1.337	1.367	1.502	1.447	1.508

YEAR	TABLE 16 Packing/ Fruit	TABLE 17 Laundry/ Clean	TABLE 18 Logging Eq.	TABLE 19 Packing/ Meat	TABLE 20 Metal Work
2003	1.000	1.000	1.000	1.000	1.000
2002	1.013	1.016	1.015	1.015	1.015
2001	1.022	1.022	1.021	1.023	1.017
2000	1.030	1.031	1.027	1.034	1.024
1999	1.052	1.050	1.045	1.053	1.038
1998	1.057	1.052	1.049	1.059	1.038
1997	1.065	1.060	1.058	1.070	1.048
1996	1.091	1.077	1.075	1.090	1.061
1995	1.104	1.094	1.090	1.109	1.080
1994	1.138	1.133	1.125	1.150	1.121
1993	1.180	1.164	1.156	1.184	1.150
1992	1.216	1.186	1.182	1.207	1.167
1991	1.241	1.198	1.201	1.225	1.177
1990	1.270	1.223	1.225	1.256	1.202
1989	1.307	1.257	1.258	1.294	1.235
1988	1.378	1.324	1.316	1.365	1.295
1987	1.432	1.378	1.364	1.420	1.352
1986	1.456	1.399	1.381	1.444	1.369
1985	1.473	1.411	1.391	1.467	1.378
1984	1.495	1.432	1.409	1.497	1.403

YEAR	TABLE 21 Mine Mill	TABLE 22 Paint Mfg.	TABLE 23 Petroleum	TABLE 24 Printing	TABLE 25 Paper Mfg.
2003	1.000	1.000	1.000	1.000	1.000
2002	1.018	1.019	1.017	1.015	1.017
2001	1.030	1.024	1.028	1.016	1.026
2000	1.037	1.034	1.041	1.025	1.032
1999	1.055	1.053	1.055	1.039	1.053
1998	1.060	1.056	1.061	1.040	1.055
1997	1.071	1.066	1.075	1.045	1.064
1996	1.088	1.082	1.093	1.062	1.086
1995	1.106	1.102	1.115	1.078	1.100
1994	1.140	1.144	1.156	1.118	1.138
1993	1.171	1.172	1.180	1.146	1.172
1992	1.196	1.192	1.191	1.163	1.199
1991	1.217	1.202	1.200	1.167	1.215
1990	1.244	1.226	1.231	1.184	1.239
1989	1.283	1.259	1.263	1.203	1.271
1988	1.352	1.329	1.327	1.269	1.341
1987	1.395	1.387	1.382	1.329	1.396
1986	1.407	1.405	1.387	1.351	1.414
1985	1.414	1.413	1.388	1.364	1.424
1984	1.431	1.433	1.403	1.383	1.440

YEAR	TABLE 26 Refriger-ation	TABLE 27 Rubber	TABLE 28 Steam Power	TABLE 29 Textile	TABLE 30 Ware-housing
2003	1.000	1.000	1.000	1.000	1.000
2002	1.018	1.017	1.018	1.013	1.011
2001	1.026	1.020	1.022	1.017	1.015
2000	1.036	1.029	1.030	1.025	1.021
1999	1.056	1.044	1.046	1.041	1.039
1998	1.061	1.049	1.047	1.042	1.041
1997	1.071	1.060	1.055	1.051	1.044
1996	1.088	1.075	1.066	1.069	1.061
1995	1.108	1.195	1.183	1.083	1.071
1994	1.149	1.134	1.126	1.116	1.101
1993	1.180	1.160	1.150	1.145	1.138
1992	1.203	1.183	1.163	1.167	1.164
1991	1.217	1.195	1.169	1.182	1.180
1990	1.244	1.222	1.188	1.208	1.201
1989	1.277	1.256	1.219	1.239	1.230
1988	1.348	1.321	1.292	1.301	1.285
1987	1.403	1.373	1.353	1.356	1.326
1986	1.423	1.395	1.368	1.378	1.344
1985	1.434	1.406	1.374	1.394	1.354
1984	1.456	1.432	1.396	1.414	1.369

YEAR	TABLE 31 Wood Working	TABLE 32 Glass Mfg.
2003	1.000	1.000
2002	1.014	1.018
2001	1.023	1.023
2000	1.024	1.033
1999	1.041	1.052
1998	1.042	1.055
1997	1.047	1.063
1996	1.073	1.077
1995	1.084	1.096
1994	1.115	1.140
1993	1.153	1.166
1992	1.193	1.183
1991	1.216	1.190
1990	1.236	1.211
1989	1.270	1.241
1988	1.340	1.310
1987	1.393	1.369
1986	1.413	1.385
1985	1.422	1.392
1984	1.441	1.409

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-138 and 15-8-111, MCA

REASONABLE NECESSITY: See the reasonable necessity for ARM 42.21.113. The additional categories added to (2) are necessary because they are descriptions that were never identified before but are applicable to this type of taxation.

42.22.1312 INDUSTRIAL MACHINERY AND EQUIPMENT DEPRECIATION SCHEDULE (1) The department will utilize the machinery and equipment depreciation schedule which is set forth in the following table. The depreciation schedule will be used to value industrial machinery and equipment for ad valorem tax purposes pursuant to ARM 42.22.1306.

MANUFACTURING MACHINERY AND EQUIPMENT PERCENT GOOD TABLE

Life Expectancy

(Age) 5	10	12	13	15	16	18	20	~~(Age) 40~~	~~(Age) 40~~
1 85	92	94	94	95	95	96	97	~~1 98~~	~~21 58~~
2 69	84	87	88	90	91	93	93	~~2 97~~	~~22 56~~
3 52	76	80	82	85	86	89	90	~~3 95~~	~~23 54~~
4 34	67	73	75	79	80	83	86	~~4 94~~	~~24 52~~
5 20	58	66	69	73	74	78	82	~~5 92~~	~~25 50~~
6	49	58	62	68	69	74	78	~~6 90~~	~~26 48~~
7	39	50	54	62	64	68	74	~~7 87~~	~~27 46~~

8	30	43	47	55	57	63	70	~~8~~	~~85~~	~~28~~ ~~44~~
9	24	36	41	49	52	59	65	~~9~~	~~83~~	~~29~~ ~~42~~
10	20	29	34	43	46	53	60	~~10~~	~~81~~	~~30~~ ~~40~~
11		24	29	37	40	47	55	~~11~~	~~79~~	~~31~~ ~~38~~
12		20	24	31	34	42	50	~~12~~	~~77~~	~~32~~ ~~36~~
13			20	26	29	36	45	~~13~~	~~75~~	~~33~~ ~~34~~
14				23	26	32	40	~~14~~	~~72~~	~~34~~ ~~32~~
15				20	23	28	35	~~15~~	~~70~~	~~35~~ ~~30~~
16					20	25	31	~~16~~	~~68~~	~~36~~ ~~28~~
17						22	27	~~17~~	~~66~~	~~37~~ ~~26~~
18						20	24	~~18~~	~~64~~	~~38~~ ~~24~~
19							22	~~19~~	~~62~~	~~39~~ ~~22~~
20							20	~~20~~	~~60~~	~~40~~ ~~20~~

(2) The department will utilize the depreciation schedules set forth above as reflected in the following example:

EXAMPLE
The Trending/Depreciation Procedure

In order to use the economic age-life method to value machinery and equipment, several steps must be followed.

1. Determine the economic life of the subject industry.
2. Acquire a set of reasonable trends for that economic life.
3. Acquire the original installed cost (direct and indirect) for the subject equipment.
4. Apply the appropriate trend factor to the original installed cost to determine replacement cost new (RCN).
5. Depreciate the RCN on the basis of age to arrive at sound value.

Example:

~~Industry - Sawmill~~
~~Economic life - 10 years~~
~~1999 Table - Table 18~~

~~Case~~	~~I~~	~~II~~
~~Equipment - Motor~~		
~~Original Installed Cost~~	~~$ 200~~	~~$ 100~~
~~Year Installed~~	~~1990~~	~~1977~~

~~Case I~~		~~Case II~~	
~~Cost~~	~~$ 200~~	~~Cost~~	~~$ 100~~
~~x Trend~~	~~1.199~~	~~x Trend~~	~~1.254*~~
~~RCN~~	~~240~~	~~RCN~~	~~125~~
~~x % Good~~	~~.24~~	~~x % Good~~	~~.20~~
~~Sound Value~~	~~$ 58~~	~~Sound Value~~	~~$ 25~~

Industry - Sawmill
Economic life - 10 years

2004 Table - Table 18

Case	I	II
Equipment - Motor		
Original Installed Cost	$ 200	$ 100
Year Installed	2000	1977

Case I		Case II	
Cost	$ 200	Cost	$ 100
x Trend	1.027	x Trend	1.125*
RCN	205	RCN	113
x % Good	.67	x % Good	.20
Sound Value	$ 138	Sound Value	$ 23

*The trending factor is applied only to the last year of the economic life. Although the equipment is more than 20 years old, it is trended by the 10th year trend.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-138, 15-6-156 and 15-8-111, MCA

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than December 5, 2003.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking

actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Linda M. Francis
CLEO ANDERSON	LINDA M. FRANCIS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 6, 2003

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 6, 2003, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register.

2. The Secretary of State 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 Secretary of State's Office no later than 5:00 p.m. on October 27, 2003, to advise us of the nature of the accommodation that you need. Please contact Kathy Lubke, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2055; FAX (406) 444-5833; email klubke@state.mt.us.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

~~2003~~ 2004 Schedule

Filing	Compiling	Printer Pickup	Publication
January ~~6~~ 5	January ~~7~~ 6	January ~~8~~ 7	January ~~16~~ 15
January ~~17~~ 16	January ~~21~~ 20	January ~~22~~ 21	January ~~30~~ 29
February ~~3~~ 2	February ~~4~~ 3	February ~~5~~ 4	February ~~13~~ 12
February ~~14~~ 17	February 18	February 19	February ~~27~~ 26
March ~~3~~ 1	March ~~4~~ 2	March ~~5~~ 3	March ~~13~~ 11
March ~~17~~ 15	March ~~18~~ 16	March ~~19~~ 17	March ~~27~~ 25
~~March 31~~	~~April 1~~	~~April 2~~	~~April 10~~
March 29	March 30	March 31	April 8
April ~~14~~ 12	April ~~15~~ 13	April ~~16~~ 14	April ~~24~~ 22
April ~~28~~ 26	April ~~29~~ 27	April ~~30~~ 28	May ~~8~~ 6
May ~~12~~ 10	May ~~13~~ 11	May ~~14~~ 12	May ~~22~~ 20
May 24	May 25	May 26	June 3

June ~~2~~ 7	June ~~3~~ 8	June ~~4~~ 9	June ~~12~~ 17
June ~~16~~ 21	June ~~17~~ 22	June ~~18~~ 23	~~June 26~~ July 1
July ~~7~~ 12	July ~~8~~ 13	July ~~9~~ 14	July ~~17~~ 22
July ~~21~~ 26	July ~~22~~ 27	July ~~23~~ 28	~~July 31~~ August 5
August ~~4~~ 9	August ~~5~~ 10	August ~~6~~ 11	August ~~14~~ 19
August ~~18~~ 23	August ~~19~~ 24	August ~~20~~ 25	~~August 28~~ September 2
September ~~2~~ 13	September ~~3~~ 14	September ~~4~~ 15	September ~~11~~ 23
September ~~15~~27	September ~~16~~28	September ~~17~~29	~~September 25~~ October 7
October ~~6~~ 8	October ~~7~~ 12	October ~~8~~ 13	October ~~16~~ 21
October ~~20~~ 25	October ~~21~~ 26	October ~~22~~ 27	~~October 30~~ November 4
November ~~3~~ 8	November ~~4~~ 9	November ~~5~~ 10	November ~~13~~ 18
November ~~17~~ 22	November ~~18~~ 23	November ~~19~~ 24	~~November 26~~ December 2
December ~~1~~ 6	December ~~2~~ 7	December ~~3~~ 8	December ~~11~~ 16
~~December 15~~	~~December 16~~	~~December 17~~	~~December 24~~

(2) remains the same.

AUTH: Sec. 2-4-312, MCA
IMP: Sec. 2-4-312, MCA

4. ARM 1.2.419 is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 2004. The schedule is proposed during the month of October in order that it may be adopted during November or December. This allows state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year.

5. 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 Kathy Lubke, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing klubke@state.mt.us, and must be received no later than November 13, 2003.

6. Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801 has been designated to preside over and conduct the hearing.

7. The Secretary of State's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative

Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, emailed to klubke@state.mt.us, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 6th day of October 2003.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of a new rule (ARM 8.94.3809) for the administration of projects funded by the Treasure State Endowment Program (TSEP)	))))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On July 31, 2003, the Department of Commerce published MAR Notice No. 8-94-36 regarding the public hearing on the proposed adoption of a rule concerning the administration of projects funded by the Treasure State Endowment Program at page 1581 of the 2003 Montana Administrative Register, Issue Number 14.

2. The Department has adopted the new rule (8.94.3809) exactly as proposed.

3. No comments or testimony were received.

COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

By: /s/ MARK A. SIMONICH
MARK A. SIMONICH, DIRECTOR
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State October 6, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.501, 17.8.504, 17.8.505, 17.8.511, 17.8.514 and 17.8.515 pertaining to definitions, permit application fees, operation fees, application/operation fee assessment appeal procedures and open burning fees	NOTICE OF AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On June 26, 2003, the Board of Environmental Review published MAR Notice No. 17-193 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1242, 2003 Montana Administrative Register, issue number 12.

2. The Board has amended the rules exactly as proposed.

3. No public comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

By: *Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.
Chairman

Reviewed by:

David Rusoff
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, October 6, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.749, 17.8.759, 17.8.763 and 17.8.764 pertaining to conditions for issuance or denial of permits, review of permit applications, revocation of permits and administrative amendment to permits	NOTICE OF AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On June 26, 2003, the Board of Environmental Review published MAR Notice No. 17-194 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1252, 2003 Montana Administrative Register, issue number 12.

2. The Board has amended the rules exactly as proposed.

3. The following comments were received and appear with the Board's responses:

COMMENT NO. 1: The U.S. Environmental Protection Agency (EPA) commented that it would prefer that the Board adopt a 30-day comment period for all preliminary determinations. EPA recognizes that the Board has used the 15-day public review period for many years, and that it was originally approved by EPA in reliance on the grandfathering provisions of 40 CFR 51.161(c). Under these circumstances the continued use of a 15-day comment period for most minor sources is acceptable; however, there is one class of "minor" preliminary determinations that merits special consideration. In some situations, a source that would otherwise be subject to major source permitting might accept emission limits in its permit to avoid major source permitting, either by limiting potential to emit or by making enforceable emission reductions that can be used for netting purposes. EPA believes that these types of permitting actions are highly significant and can be quite complex, and should receive more than the minimum review time to facilitate meaningful public comments. EPA requested that the rule be revised to also require a 30-day public review for preliminary determinations for sources that accept limits to avoid major source permitting (i.e., for both construction and Title V operating permits).

RESPONSE: The Board has not made the suggested revision. As the proposed amendments are currently written, the 30-day comment period and the 75-day period for final action apply to Title V synthetic minor operating permits, which are subject to the federal air permitting provisions of 42 USC 7661. However, applying the 30-day comment period to synthetic minor

source preconstruction permits is beyond the legislative mandate.

COMMENT NO. 2: EPA commented that although it is not stated in the proposed revisions to ARM 17.8.759(4)(b), EPA assumes that the state provides the necessary 30-day public comment period for preliminary determinations involving case-by-case maximum achievable control technology (MACT) determinations. The state has adopted by reference 40 CFR Part 63 in ARM 17.8.302 and 17.8.342, and 40 CFR Part 63 specifically requires a 30-day public comment period. However, ARM 17.8.342(7) indicates that ARM Title 17, chapter 8, subchapter 7, governs the application, review and final approval or denial of a notice of MACT approval or 112(g) exemption and specifically references ARM 17.8.759. Since the proposed 30-day public review period in ARM 17.8.759(4)(b) applies only to sources subject to 42 USC 7475, 7503 or 7661, EPA is concerned that sources might ask the state to follow the 15-day notice provision of ARM 17.8.759 instead of the 30-day notice provisions of 40 CFR 63.43(h)(ii) and 63.54(c)(2). EPA requested that the Board revise the proposed amendments to clarify that the 30-day comment period also applies to all MACT determinations.

RESPONSE: The Board has not made the suggested revision. As the proposed amendments are currently written, the 30-day comment period and the 75-day period for final action apply to case-by-case MACT determinations, since these applications are subject to the federal air permitting provisions of 42 USC 7661. Also, specifically stating that the 30-day comment period applies to case-by-case MACT determinations might imply that this comment period does not apply to other types of permit applications subject to the provisions of 42 USC 7661 that are not listed in the rule.

BOARD OF ENVIRONMENTAL REVIEW

By: *Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.
Chairman

Reviewed by:

David Rusoff
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, October 6, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.716 pertaining to categories of activities that cause non-significant changes in water quality	NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On June 26, 2003, the Board of Environmental Review published MAR Notice No. 17-192 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 1233, 2003 Montana Administrative Register, issue number 12.

2. The Board has amended the rule as proposed, but with the following changes, deleted matter interlined, new matter underlined:

17.30.716 CATEGORIES OF ACTIVITIES THAT CAUSE NON-SIGNIFICANT CHANGES IN WATER QUALITY (1) remains as proposed.

(2) Except as provided in (5), a subsurface wastewater treatment system (SWTS) that meets all of the criteria in (2)(a) and falls within one of the categories in (2)(b) is nonsignificant.

(a) The SWTS, including primary and replacement drainfields must meet all of the following criteria:

(i) through (vi) remain as proposed.

(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 ~~three~~ two mg/L.

(2)(a)(vii)(A) through (5)(g) remain as proposed.

(6) The department may determine that the categorical exclusion in (2) does not apply to lots within a specific geographic area. This determination must be based upon information submitted in a petition demonstrating that the categorical exclusions should not apply within that area.

(a) A petition submitted under this rule may be considered only if it is submitted by a local governing body, a local department or board of health, a local water quality district, or by either 10% or 20, whichever is fewer, of the landowners (or persons with a contract interest in land) within the affected geographic area.

(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 would not apply;

(ii) a detailed description of the soils, geology, and hydrogeology of the area described in (6)(b)(i);

(iii) a current listing from a title insurance company of the names and addresses of all persons who either own or have a contract interest in land within the petition area; and

(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), for a septic system; or

(B) data from ground water samples collected at least three years apart from the same 15 wells indicate a statistically significant increase of greater than 1.0 mg/L in nitrate as nitrogen concentrations in the uppermost aquifer.

(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) a description of the petition area;

(ii) a summary of the basis for the preliminary decision including any modifications to the boundaries of the petition area;

(iii) a description of the procedures for public participation and of the opportunity to comment prior to the department's final decision on the petition;

(iv) the ending dates of the comment period and the address where comments will be received;

(v) procedures for requesting a hearing; and

(vi) the name and telephone number of a person to contact for additional information.

(d) Within 60 days after the close of the public comment period, the department shall issue a final decision and provide written notice of its decision to the petitioner and to each person who submitted written comments. The final decision must set forth the department's reasons for granting or denying the petition and must include a response to all substantive comments received by the department during the public comment period or during any hearing.

3. The following comments were received and appear with the Board's responses:

COMMENT NO. 1: Protecting ground water resources and especially Flathead Lake is of major importance. More

supervision not less is needed. The commentor strongly recommends rejection of the proposed amendments.

RESPONSE: The proposed rule amendments are protective of health and water quality. The proposed requirements for pressure-dosed drainfields and prescriptive setbacks are more stringent than the current rule. The current rule has a single setback distance from surface water of 300 feet. The proposed rule has several different setback distances of 200, 400, 500 and 1,000 feet. Three of the four proposed setbacks are greater than the current setback. The shortest proposed setback, 200 feet, also includes a requirement for pressure-dosing that is not required under the current rule. Pressure-dosing provides better treatment than gravity-dosed systems. In addition, the proposed rule requires pressure-dosing under several other circumstances depending on the soil type and the specific exemption in proposed (2)(b). The current rule does not include any requirements for pressure-dosing.

The proposed rule has reduced some of the soil thickness and depth to ground water/bedrock requirements as compared to the current rule. However, since the majority of effluent treatment occurs in the shallow section of the soil column, these modifications are relatively minor and are offset by the increased setback and/or pressure-dosing requirements.

The proposed rules will reduce the amount of time that review staff spend on subdivisions that do not pose a threat to health or the environment, and allow them to spend more time reviewing subdivisions where there may be health or environmental impacts.

COMMENT NO. 2: Developers should not be the ones determining the propriety of new septic tanks, because they are the ones who stand to profit. Non-degradation rules are important for ensuring water quality. Public health and water quality should be more important now than ever due to the excessive developing that is taking place in our neighborhoods. The public hearing process is an important part of ensuring safety in our community.

RESPONSE: The proposed rule was initially developed by a committee of Department employees, and then was revised over a series of three meetings with stakeholders from across the state. The stakeholders group included county officials, consultants, realtors, and environmental groups. No single entity or group was able to overly influence the contents of the proposed amendments. The petition process, based on that in the current rule, will be retained in the final amendments.

COMMENT NO. 3: The 3 mg/L threshold for nitrate concentration in the proposed amendments is far below the United States Environmental Protection Agency's (EPA's) recommended human health limit of 10 mg/L. This low threshold likely will pose problems for development in Billings, especially in the West Billings Area, a segment that is expanding rapidly. A 2002 report conducted by the Montana

Bureau of Mines and Geology found an average nitrate concentration of 3.3 mg/L from 130 samples, with 18% of the samples ranging between 5 mg/L and 10 mg/L. With the Board's 3 mg/L threshold, much of the development in the West Billings Area may not meet the requirements for nonsignificance. The report also found that septic systems contribute only 10 to 20% of nitrate concentration in the ground water. Soil organic matter, agricultural fertilizers, and animal manure constitute the remaining percentage. Not only does the report illustrate that the Board's 3 mg/L threshold is unreasonable, it illustrates that septic system effluence is not always the primary cause of nitrate concentration in ground water. The Board should reevaluate its nitrate concentration threshold of 3 mg/L, opting for a model that allows for a range of concentration and is flexible enough to take into account unique local conditions.

RESPONSE: Note that based on other public comments (see Response to Comment No. 12), the Board will modify the proposed 3 mg/L concentration to 2 mg/L, which is the level in the current rules. The 2 mg/L value in (2)(a)(vii) is an appropriate threshold for this rule based on recent studies by the United States Geological Survey (USGS) that indicate nitrate concentrations above 2 mg/L are indicative of anthropogenic effects. 2 mg/L is 40% of the allowable nondegradation limit of 5 mg/L for conventional septic systems (septic tank and drainfield).

If the background concentration is over 2 mg/L, the result is not that the site is deemed to cause degradation, but only that the site cannot qualify for one of the categorical exclusions in this rule, so that the applicant will need to demonstrate nonsignificance using the standard nitrogen dilution equation and the phosphorus breakthrough calculations. If background nitrate in an area is elevated above 2 mg/L, the nitrate dilution equation provides a more flexible approach to account for local conditions, and thereby to meet the nondegradation requirements.

The source of elevated nitrate in ground water, whether from septic systems, manure, agricultural practices, or natural sources, is not accounted for in the rule because the health and environmental effects of nitrate are the same regardless of the source.

COMMENT NO. 4: DEQ is displaying favoritism towards new technologies such as pressure-dosed septic systems over traditional gravity flow septic systems. If installed properly, gravity flow septic systems are suitable for soils endemic to the Billings area. Favoritism towards new technologies will drive up housing prices in Billings. Gravity flow septic systems cost considerably less than the pressure-dosed septic systems (approximately $3,000 and $4,500, respectively). Increased housing costs further perpetuate the problem of attainable housing in our area, which can dampen economic development. Again, DEQ should be

more sensitive to unique local conditions, not to mention the impact rigid rules can have on the quality of life in a community.

RESPONSE: Pressure-dosing is not considered a new technology. It is well established that pressure-dosing provides better distribution of effluent in the drainfield and provides contact with more soil, resulting in better overall treatment of effluent compared with gravity dosing.

The proposed amendments recognize that pressure-dosing may not be necessary in every location, and do not require it for every site that uses the exemptions. Two of the exemptions, (2)(b)(i) and (2)(b)(iv), do not require pressure-dosing unless the soil is outside the range of the better soils for effluent treatment. See (2)(a)(ii) of the proposed amendments for a description of those soil types and percolation rates.

An applicant may elect to avoid pressure-dosing by not using the exemptions, instead using the nitrate dilution and phosphorus breakthrough equations to satisfy the nondegradation requirements. If a site is determined to be nonsignificant under those methods, there is no requirement under the nondegradation or mixing zone rules for pressure-dosing, although pressure-dosing may still be required under some site conditions pursuant to the DEQ subdivision rules or Department Circular DEQ-4.

COMMENT NO. 5: The regulations are written in a fashion that is hard for the layperson to understand. Regulations should be written in a straightforward manner so that the business people affected spend as little time as possible away from their businesses to comply. DEQ should make available in print or online a user-friendly compliance brochure. Moreover, in the interests of participatory government, the Board should reinstate the citizen petition process.

RESPONSE: After the rule is finalized, the Department plans to prepare and distribute a summary table of the rules with the intent of making it easier for the regulated community to understand and comply with the rule requirements.

The petition process, based on that in the current rule, will be retained in the final amendments. The petition process from the old rule has been simplified from a two-step to a one-step procedure. The percentage of landowners required for initiation of a petition has been reduced from 25% to 10%.

COMMENT NO. 6: The state seems unwilling to consider the many proven, efficient, biofilter advanced on-site systems. Two very high performance biofilter systems have proven to operate extremely well in climates such as ours; the Waterloo Biofilter System and the Waterloo Nitrex R. These systems are working well and providing residents of most other states with a proven alternative to the inefficient traditional septic and drainfield systems forced on the residents of Montana.

The narrowing of choices only makes it easier for small, low income communities to be taken advantage of by developers and real estate investors who use this regulatory quagmire to force rural communities into expensive and unnecessary centralized collection and treatment facilities.

RESPONSE: The proposed amendments do not address the issue discussed in the comment, which relates to the state standards for design of on-site wastewater systems. The standards for such systems are contained in Department Circular DEQ-4, which is not being amended at this time. It should be noted, however, that DEQ-4 does allow use of treatment systems such as the two systems mentioned in the comment under the "Experimental System" chapter.

COMMENT NO. 7: A commentor opposes the proposed amendments, and requests that DEQ perform research, particularly in growth areas in Montana, to scientifically support its assertion that septic systems pose no threat to ground water and can be considered non-significant. DEQ has not maintained exact records regarding those systems that have been determined to be non-significant. DEQ must do additional work to ensure that it meets the requirements of 75-5-303(1), MCA: "Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected." Until DEQ can scientifically state that approved systems have had non-significant impacts to ground water, it is premature and imprudent to approve these amendments. The proposed regulations also ignore the very important consequences of cumulative effects.

RESPONSE: Properly installed and maintained sewage treatment systems will provide adequate treatment and prevent significant impacts to health and the environment. A 2002 report by the United States Environmental Protection Agency (EPA) finds that public health and environmental risks from properly sited, designed, constructed, and operated septic tank systems are low. The EPA report indicates that individual septic systems may not be the best choice for high-density areas, but the proposed exemptions address this issue by requiring at least two-acre lots for most of the categories. Although there is no universally accepted definition of "high-density" development, it is generally considered to be greater than one single-family home per acre. Section (2)(b)(iii) allows lots as small as one acre, but has strict requirements for depths to bedrock and ground water (over 100 feet), pressure-dosing (required for all soil types), and the number of lots (limited to subdivisions of five lots or fewer). Section (2)(b)(iv) does not have a lot size limit, but this exemption only applies to rural counties that do not typically experience areas of high-density development.

The commentor appears to request that the Department monitor ground water beneath previously approved wastewater treatment systems that have been approved under the current rule. Based on results of published reports and a 2002 EPA

report, properly sited and installed septic systems provide adequate treatment to protect human health and the environment as long as the density of those systems remains at an acceptable level. Published reports indicate that a density of less than one system per acre is typically adequate to avoid significant impacts to the environment. Therefore, it is not necessary for the Department to collect additional information.

The Department requirement for a recent ground water nitrate test for every new subdivision provides additional assurances that previously approved and constructed subdivisions have not caused significant degradation of the ground water.

The proposed exemptions minimize the possibility of cumulative effects. See Response to Comment No. 15.

COMMENT NO. 8: Scientific literature establishes a causal relationship between septic system effluent discharge and water contamination throughout the United States and other parts of the world. The "non-significant" descriptor in the proposed amendments is inappropriate. In fact, sewage effluent, which contains bacteria, viruses, and chemicals, is frequently injected via septic systems into the ground in areas that are totally reliant on ground water as a sole source of drinking water. Surface water in areas recharged from ground water subject to the influence of upgradient septic systems is also at high risk of contamination. These ubiquitous and well documented cases are hardly nonsignificant.

RESPONSE: The proposed exemptions are written under the authority of 75-5-301(5)(c), MCA, which requires the Board to establish criteria for activities that cause nonsignificant changes in water quality. This statute requires the Board to equate significance with the potential harm to human health, a beneficial use, or the environment, taking into consideration the quantity and strength of the pollutant, the length of time degradation will occur, and the pollutant character. It is clear from the statute that the term "nonsignificant" does not mean absolutely no impact. The statutes and rules recognize that anthropogenic activities will create impacts to the environment, and the nondegradation rules are designed to mitigate those impacts, not to eliminate impacts entirely.

As stated in Response to Comment No. 7, properly sited and maintained septic systems present a low risk to public health and the environment (EPA, 2002). In 2002, the Department revised the rules for sewage systems in subdivisions and the sewage system design circular, DEQ-4, to ensure that sewage systems are designed correctly and sited in appropriate locations.

COMMENT NO. 9: According to 75-5-303(1), MCA, "Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected."

Isn't this a main purpose for the existence of Montana's DEQ?

RESPONSE: The proposed rules meet the requirements of the referenced statute.

COMMENT NO. 10: Proposed (2)(a)(i) states: "The drainfield must be 1,000 feet or more (400 feet or more for lots that meet the criteria in (2)(b)(iv) from the nearest ... state surface water that might be impacted." This language is a significant improvement over the current rule and is more protective of surface water bodies, except it becomes a moot point by the newly proposed second part of the rule "this distance may be reduced by 50% (to 500 and 200 feet, respectively) if the drainfield is pressure-dosed." Pressure-dosing is an improvement over regular drainfield lines that rely on gravity flow. However, the effluent flowing into the subsurface soils beneath the drainfield is the same effluent leaving a non-pressurized drainfield, especially as the drainfield reaches its lifetime and will need replacement. Leave the first part of the rule and omit the second.

RESPONSE: The reduction in setbacks in the second part of this exemption is provided to encourage the use of pressure-dosed drainfields. Pressure-dosed drainfields provide better treatment of effluent than gravity dosed drainfields and have a longer life expectancy. A 2002 report by EPA concluded that: "Dosed-flow distribution systems are a significant improvement over gravity-flow distribution systems... Dosing achieves better distribution of the wastewater effluent over the infiltration surface than gravity flow systems and provides intervals between doses when no wastewater is applied. As a result, dosed-flow systems reduce the rate of soil clogging, more effectively maintain unsaturated conditions in the subsoil..." The setback reduction for pressure-dosed systems is justified given the better treatment capability of those systems.

COMMENT NO. 11: Proposed (2)(a)(ii)(A) states: "the soil percolation rate must be between 16 and 50 minutes per inch." Soil percolation tests are subject to too many variables to be considered an adequate test of soil treatment suitability. In addition, percolation tests are carried out at land surface and they are generally not verified by DEQ personnel. Treatment fields are at one to five feet below land surface and soils can significantly change within the soil profile. "Perc" tests are not a good scientific indication of soil suitability for treatment and should be eliminated from testing requirements and replaced with appropriate soil pit texturing and tests by professionals.

RESPONSE: Section (2)(a)(ii) has two subsections, (A) and (B), both of which must be satisfied to meet this exemption. Subsection (B) requires at least six feet of the specified soil type. By requiring a specific soil type, the proposed rule already requires what the comment requests. Including the requirement in (A), for a percolation test value, is a supplement to the criteria for a soil description

in (B). Percolation values are only required by the proposed amendments when a percolation test has been required separately under Department Circular DEQ-4.

COMMENT NO. 12: Proposed ARM 17.30.716(2)(a)(vii) states: "The background nitrate (as N) concentration in the shallowest ground water must be less than three mg/L." The current regulations have a rather complicated system of assessment regarding application of background nitrate values to proposed downgradient use, and a requirement of 3 mg/L is an improvement over the current complex rating system. It is also more protective of ground water resources than the current limits of 5 and 7.5 mg/L in certain cases. However, if a background nitrate concentration can be historically shown to be significantly less than 3 mg/L nitrate (say 1 mg/L or less), then impacts to ground water have already occurred. If the only change in activity in the area upgradient to an area proposed for development and subsequent future installation of septic systems is subdivision and housing, then it is reasonable to say that degradation of ground water quality has occurred and will continue to occur and most likely will increase in the receiving waters. This is not protective of ground water and the rule should be changed to accommodate those areas that have historical nitrate concentrations less than 3 mg/L. It is inappropriate to allow possible catastrophic development of an area based on a nitrate background value that reflects a "snapshot" in time. The trend in nitrate concentration is much more important than the value at any given time. The regulations should be modified to require trend analysis where data are available.

RESPONSE: The comment is correct in that a nitrate concentration of less than 3 mg/L does not guarantee that there have been no anthropogenic impacts to the ground water. In the few cases where adequate historic data are available to identify an increasing trend in nitrate concentrations, the Department can use that information to deny an exemption based on the proposed language in (5)(a). The exemption can be denied even if the background nitrate concentration is less than the maximum limit in the proposed rule. Proposed (5)(a) allows the Department to use cumulative impacts or synergistic effects to require review of the site using the standard nitrate dilution and the phosphorus breakthrough analyses. Therefore, adding an additional rule section requiring trend analysis is not necessary.

The 3 mg/L concentration in proposed (2)(a)(vii) is the nitrate concentration that indicates the ground water has been impacted by anthropogenic activities according to a 1985 USGS study. However, based on public comments the Department has determined that more recent USGS studies published in 1996 and 2000 indicate that the anthropogenic impacted concentration is lower at 2 mg/L. Based on those more recent studies, the Department will modify the proposed value of 3 mg/L to 2 mg/L, which is the same value as in the current rule.

COMMENT NO. 13: Proposed (2)(a)(vii)(A) states: "The department may require multiple ground water samples over a specified time period to determine whether seasonable variation of ground water nitrate concentrations may affect compliance with this requirement." The "may" should be changed to "shall." Seasonal variation appears to have an effect on the level of nitrate concentrations, but this phenomenon is not well understood nor has it been studied or well documented in the literature. Given Montana's current drought situation, this will be especially important later when we return to a wetter cycle as water tables rise and those chemical values in soil beneath drainfields are moved into the saturated zone and carried into ground water to either a receiving well or surface waters.

RESPONSE: Requiring seasonal data for each site is not necessary. There are many areas in the state where seasonal variation of nitrate ground water concentrations does not occur to any noticeable degree. To require all areas to collect seasonal data, which may take up to 12 months to complete, would create an unreasonable delay in processing applications and would not provide useful information in many cases. The current language allows the Department discretion to request additional information in areas where the data will be useful.

COMMENT NO. 14: In proposed (2)(b)(i)(D) and (2)(b)(ii)(E) the limitations on depth to bedrock and uppermost aquifer are significantly reduced compared to the current rule, by as much as 92%. How can this be considered more protective of ground water? Bedrock aquifers are more susceptible to contamination from surface and subsurface sources because of the nature of flow within the fractured systems. Once contamination reaches ground water in bedrock systems, it can travel rapidly in fractures without dilution or further treatment. Keeping the requirements as they are currently written is the more protective of the two statutes.

RESPONSE: The 92% value cited in the comment is somewhat misleading because it compares the separation requirement for one-acre and larger lots in the current rule (100 feet) to the separation requirement for two-acre and larger lots in proposed rule subsections (2)(b)(i)(D) and (2)(b)(ii)(E) (8 or 12 feet respectively). For one-acre and larger lots the proposed rule maintains the 100-foot separation requirement that is in the current rule for one-acre lots.

For two-acre and larger lots, the proposed amendments reduce the separation to bedrock/aquifer from 50 feet in the current rule to either 8 or 12 feet. The reasoning behind this reduction is that the majority of effluent treatment occurs in the upper several feet of the soil column (except for phosphorus) because this is where the majority of organic material resides. According to a 2002 EPA report: "Biochemical oxygen demand, suspended solids, fecal indicators and surfactants are effectively removed within 2 to 5 feet of unsaturated, aerobic soil..." With lot sizes greater than two

acres, the 8 to 12 feet of separation is adequate. The much greater separation for the one acre lots (100 feet) is included to avoid impacts from cumulative effects.

Cumulative effects of the larger lots (over two acres) will not create significant nitrogen or phosphorus degradation due to the rule restrictions on soil type, surface water setbacks, pressure-dosing requirements, and based on the relatively low density provided by the two-acre limit. Based on existing national research, areas of significant nitrogen ground water degradation that are due to septic systems are typically associated with high density development, with "high density" generally being greater than one home per acre.

COMMENT NO. 15: These rules promote development at the cost of ground water degradation. Cumulative effects, which are cursorily addressed in proposed ARM 17.30.716(5)(a), should be the major concern of DEQ. An appropriate analogy is the "death of a thousand cuts". Each additional septic system only slightly increases the impact to ground water, but eventually, with enough development and enough time, the ground water is rendered not potable. Previously approved and developed subdivisions may have had septic system installations that were far enough apart, in appropriate soils, with adequate depth to the underlying aquifer, so that impacts from septic systems were mitigated. However, if those subdivisions are surrounded by additional subdivisions with additional septic system effluent loading, the cumulative effects will occur over time and ground water will be contaminated by human sewage. DEQ must effectively address this issue or many households will eventually lose their sole source of drinking water.

RESPONSE: The proposed rules minimize the possibility of cumulative effects in several ways. First, only two of the exemptions allow less than a two-acre lot size. Based on published studies, low-density development (density of less than one home per acre) decreases the chances of cumulative impact problems. Subsection (2)(b)(iv) does not have a lot size limit, but this exemption is only applicable to counties with very low growth rates where cumulative impacts are not a problem. Subsection (2)(b)(iii) is an exemption for lots one acre and larger, but due to the restrictive requirements in this section (including limiting it to subdivisions of five lots or less) it is not anticipated that this exemption will create cumulative impact problems. Second, the proposed rule requires that the background nitrate be less than 2 mg/L (see Response to Comment No. 12). This requirement will limit use of the exemptions in areas where a nitrate ground water problem is developing. Third, (5)(a) allows the Department to deny use of an exemption if the Department believes cumulative effects will cause a problem. Finally, the petition process allows local citizens and local government to alert the Department to a local problem that the Department may not be aware of in reviewing an application.

COMMENT NO. 16: The reasons for the amendments are nebulous and subject to question. What is the problem of having to meet more complex requirements if it is more protective of ground water?

RESPONSE: One of the primary benefits of the proposed amendments is that it will reduce the time to review those nonsignificance applications that do not pose a threat to health or the environment. By reducing the review time for such sites, Department personnel will have more time for reviewing developments that may have significant health or environmental impacts.

COMMENT NO. 17: DEQ has not maintained exact records regarding those systems that have been determined to be non-significant. Has DEQ in fact looked at the systems it has approved to determine if they have caused water quality degradation? If so, where are those records and why aren't they published and part of the public record? DEQ needs to go back and do more homework on those systems they have approved and look at specific areas of the state that are experiencing growth rates with the commensurate septic system installations and take a hard look at ground water quality in those areas, both over time and with fluctuating aquifer levels. Until that information is available and DEQ has more scientific evidence to show that septic systems in these situations are non-significant, they have no legitimate reason for changing the current rules.

RESPONSE: See Response to Comment No. 7.

COMMENT NO. 18: Evidence in the Helena area based on 1460 data points over a 31-year period shows consistent and ongoing degradation of ground water. The only land use that has changed in that period is subdivision growth, with septic systems, in areas that were formerly prairie or agricultural properties. This is not a unique situation for Montana and assessments should be done across the state before rules are changed that are less protective of a resource that cannot be easily replaced.

RESPONSE: The change in nitrate concentration contours may be due to the increase in the number of wells available to sample in 2000 as compared to 1970. Areas of elevated nitrate concentration may have existed in 1970 but not recognized until additional wells were constructed after 1970. Increases of nitrogen in ground water may also be linked to the amount of nitrogen-based fertilizer used for agricultural purposes. According to a 1995 USGS report, nitrogen fertilizer use in the U.S. has increased by 20% between 1970 and 1995. While the agricultural land in the valley may have been reduced between 1970 and 2000, the amount of fertilizer applied per acre has likely increased, which could lead to localized increases of nitrate in the ground water.

The maps submitted show several areas of elevated nitrate concentrations. However, there is no indication of whether these areas of high nitrate concentration are related to

subdivision growth. One area is downgradient of the former East Helena Asarco facility, which may be contributing to the elevated nitrate concentrations. Another area of elevated concentrations is located on the south side of Helena where all of the residences are connected to the city sewer system, and could not be contributing to the elevated nitrate concentration. Regardless of the source of elevated nitrate concentrations, the proposed amendments include a maximum background nitrate concentration that limits the use of the rule in areas where nitrate concentrations are greater than 2 mg/L, which addresses the issue in the comment.

In addition, see Response to Comment No. 1.

COMMENT NO. 19: The new rules would raise the background nitrate (as N) concentration from 2 mg/L to 3 mg/L in order to be exempted from nondegradation analysis. This change will contribute to the degradation of ground and surface water. In the Clark Fork Basin in western Montana, background nitrate concentration in ground water is typically <1 mg/L; higher concentrations are usually indicative of anthropogenic effect. The USGS states that shallow ground water unaffected by human activities commonly contains less than 2 mg/L of nitrate. Additionally, nitrate concentrations greater than 2 mg/L but less than the MCL of 10 mg/L have been associated with adverse health effects. Consequently the level of 2 mg/L in the current rules should not be increased. Alternatively, the rule could provide that the level remain at 2 mg/L, but can be revised upward or downward if local governments provide sufficient credible information demonstrating that natural background levels are higher or lower in their particular jurisdiction. This would be superior to a one-size-fits-all approach.

RESPONSE: See Response to Comment No. 12 to answer the first part of this comment.

The state water quality standard for nitrate is 10 mg/L. The Board must base its rules and determinations on those concentrations regardless of the results of the studies cited.

The petition process, which will be reinserted, with amendments, in the rule, addresses the comment in the second paragraph. If a county agency does not believe that the exemptions should be used for a particular location and the agency can demonstrate compliance with the petition process requirements, the agency can use the petition process to require the development to demonstrate nonsignificance using the nitrate dilution model and the phosphorus breakthrough calculations, thereby disallowing the use of the exemptions.

COMMENT NO. 20: A determination of nonsignificance is highly dependent on the soil profile, thus it is critical that site evaluations are conducted by a certified or licensed professional, such as a certified sanitarian. Montana, unlike neighboring states such as Idaho and Wyoming, does not currently require certification or licensing of site

evaluators, but doing so would help ensure consistency and quality in nondegradation analyses. In EPA's Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems (EPA 832-B-03-001, March 2003) five management models are presented, ranging in scope from homeowner awareness to management entity ownership. All of these models recommend licensing or certification of site evaluators. Montana should adopt this practice for all on-site wastewater site evaluations, but in the interim, minimum qualifications for a site evaluator should be required in the amended rules.

RESPONSE: This comment is outside the scope of the proposed rule. Requirements for persons who describe soil test pits are not a part of this rule, those requirements are in the subdivision rules. ARM 17.36.325(3)(c) states: "The locations [of test holes] must be established by a person qualified to evaluate and identify soil in accordance with ASTM standard D5921-96el (Standard Practice for Subsurface Site Characterization of Test Pits for On-Site Septic Systems)."

COMMENT NO. 21: The proposed amendments do not do enough to prevent surface water degradation from cumulative impacts. The horizontal setback from surface water has been increased somewhat, but a simple horizontal setback is not necessarily protective of surface water. Nitrate discharge to ground water that is hydrologically connected to surface water can travel long distances and have significant impact on surface waters where concentrations are typically much lower. Such discharges have already led to significant surface water degradation in the Clark Fork River. A 1999 study for the City of Missoula showed that ground water loading from septic systems along the lower Bitterroot River contributed 320 kilograms per day of nitrogen to the Bitterroot and Clark Fork rivers. This is equal to 70% of the nitrogen contributed by the Missoula wastewater treatment plant, the single largest source of nitrogen in the Clark Fork.

While the proposed amendments state that DEQ may review an otherwise nonsignificant designation as significant if there are cumulative impacts, analysis of cumulative effects is open to staff discretion, and there is no systematic rule or approach to reviewing the impacts of septic system nitrate to surface water.

RESPONSE: For the reasons stated in Response to Comment No. 15, the proposed amendments adequately address the possibility of significant cumulative impacts. Section (5) of the proposed amendments accounts for unique circumstances where additional scrutiny of an application is required. It is not necessary to require a cumulative effects analysis for each application, but only for those situations where the site-specific conditions indicate it is necessary.

When the Department determines that a septic system may impact surface waters, there are criteria in the rules that the Department uses to determine if the impacts are

significant. These criteria include an evaluation to determine if the WQB-7 trigger values for nitrate and/or phosphorus are exceeded pursuant to ARM 17.30.715(1)(c). If the trigger values are exceeded, the Department then assesses the impact with respect to the narrative criteria in ARM 17.30.715(1)(g). Typically, the Department uses a computer surface water model to determine compliance with the narrative standard. In addition, the Department is currently working on developing numeric standards for nutrients in surface waters. Numeric standards will provide the regulated community with more clarity as to what is necessary to satisfy the surface water nondegradation requirements.

COMMENT NO. 22: The Board should consider a rulemaking specifically designed to prevent degradation of surface water from nutrients from septic tanks. The commentor would be interested in participating with DEQ and other interested parties in developing such a rule. Until such a rule is in place, the present rule should be amended so that it does not apply to basins that have a recognized surface-water nutrient problem. This would include all basins where receiving streams are listed as "impaired" due to nutrients, basins that have nutrient TMDLs established or under development, and other high-quality surface waters. We particularly believe no exemption from nondegradation analysis should be allowed in the Clark Fork Basin for onsite systems in alluvial aquifers with flow toward surface water, given the well-documented nutrient impairments in this basin.

RESPONSE: With regards to the need to develop rules for cumulative impacts analysis, see Response to Comment No. 21.

Prohibiting use of exemptions in impaired basins would add complexity to the rule without adding any additional protection to those basins. To bar use of exemptions in an impaired basin would restrict areas of land that are remote from the impaired surface water, which would not result in additional protection for the surface water, since natural denitrification of effluent is more likely to occur as the effluent travels longer distances to its discharge point. For lots close to an impaired surface water, such as the Clark Fork River, the river alluvial material often has a high hydraulic conductivity, which makes it relatively easy to meet the nitrate concentration limits in the nitrate dilution equation at the end of a 100-foot mixing zone. In addition, to meet the 50-year phosphorus breakthrough requirement, a 100-foot wide single-family drainfield (100 feet is a common width for a single family drainfield) has to be only 200 feet (or shorter if the depth to a limiting layer is greater than four feet) from the surface water. The proposed exemptions require a minimum distance from the drainfield to surface water of 500 or 1,000 feet for areas with any significant population growth (generally the western 1/3 of the state), which is greater than the 100 or 200-foot separation that can be allowed under the nitrate dilution and phosphorus breakthrough methods. In many situations the exemptions are

more protective than the nitrogen and phosphorus calculations, and therefore there is no need to limit use of the exemptions in impaired basins.

COMMENT NO. 23: These amendments should not represent the last word in this process. The Department and the Board should continue to look for more opportunities to address the inadequacies of the current dilution model.

RESPONSE: The Department is continuing its research into methods to update the dilution model. At this time, other states that use analytical models to determine nitrogen impacts use models and assumptions similar to those used in Montana. The information that is needed to make the dilution model more accurate, which is related to the amount of natural denitrification that occurs beneath a drainfield, is typically site-specific and requires significant resources in time and money to acquire. The Department allows the use of a site-specific denitrification factor, but due to the resources required applicants have not successfully used this approach in the past.

COMMENT NO. 24: The proposed rule should not use nation-wide USGS data for determining what the non-anthropogenic affected (i.e., natural background) nitrate ground water concentration is in Montana. DEQ should allow each individual county in Montana to determine what the natural background is for use in proposed (2)(a)(vii).

RESPONSE: While there may be some differences in natural background nitrate concentrations between counties, the differences are not significant enough to justify the time and financial resources necessary to establish different values for each county. However, should any county wish to conduct such research or pursue more stringent rulemaking, the DEQ review process would honor that effort.

COMMENT NO. 25: The value for nitrate concentration in proposed (2)(a)(vii) should be set at 2 mg/L instead of 3 mg/L because a 1996 USGS report indicates the value is 2 mg/L.

RESPONSE: See Response to Comment No. 12.

COMMENT NO. 26: Soil pit descriptions are too subjective. The Department should provide a more standardized system that includes minimum standards for persons who submit soil pit descriptions to the Department.

RESPONSE: See Response to Comment No. 20.

COMMENT NO. 27: Maintain the petition process in the current rule in the proposed rule.

RESPONSE: The petition process, based on that in the current rule, will be retained in the final amendments. See Responses to Comment Nos. 5 and 29.

COMMENT NO. 28: In (5) of the proposed amendments, change the word "may" to "shall" or "must" to require the

Department to assess the impacts of cumulative effects as listed in proposed (5)(a) for every lot that uses one of the exemptions in the proposed amendments.

RESPONSE: For the reasons stated in Response to Comment No. 15, the proposed amendments adequately address the possibility of cumulative impacts. Section (5) will allow the Department to address unique circumstances where additional scrutiny of an application is required. It is not necessary to require a cumulative effects analysis for each application, but only for cases in which site-specific conditions indicate it is necessary.

COMMENT NO. 29: Maintain the petition process in the current rule, but make it easier to use by reducing the percent of local landowners necessary to request a petition.

RESPONSE: The petition process, based on that in the current rule, will be retained in the final amendments. The petition process from the old rule has been simplified from a two-step to a one-step procedure. The percentage of landowners required for initiation of a petition has been reduced from 25% to 10%.

COMMENT NO. 30: The value for nitrate concentration in (2)(a)(vii) should be set at the same value as in the current rule, 2 mg/L.

RESPONSE: See Response to Comment No. 12.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

James M. Madden
JAMES M. MADDEN
Rule Reviewer

By: *Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, October 6, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.38.602 and 17.38.603 pertaining to definitions and enforcement procedures	NOTICE OF AMENDMENT (PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On June 26, 2003, the Board of Environmental Review published MAR Notice No. 17-191 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1227, 2003 Montana Administrative Register, issue number 12.

2. The Board has amended the rules exactly as proposed.

3. No public comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

By: *Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.
Chairman

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, October 6, 2003.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 8.42.404, 8.42.405, 8.42.406, 8.42.409, 8.42.410, and 8.42.416 pertaining to temporary, out-of-state and renewal licenses, foreign-trained applicants and continuing education	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 22, 2003, the Board of Physical Therapy Examiners published MAR Notice No. 8-42-24 regarding the proposed amendment of the above-stated rules relating to temporary, out-of-state and renewal licenses, foreign-trained applicants and continuing education at page 1027, 2003 Montana Administrative Register, issue no. 10.

2. The Board has amended ARM 8.42.404, 8.42.405, 8.42.409, 8.42.410 and 8.42.416 exactly as proposed.

3. The Board has amended ARM 8.42.406 as proposed, but with the following change to correct a typographical error in the catchphrase, stricken matter interlined, new matter underlined:

8.24.406 8.42.406 LICENSURE OF OUT-OF-STATE APPLICANTS
(1) through (4) remain as proposed.

4. Five written comments were received. The following is a summary of the comments and the Board's responses.

COMMENT 1: Four comments were received that opposed the proposed amendment of ARM 8.42.416, Continuing Education. Each of the four comments argued against the Board's limiting the number of continuing education credits allowed by correspondence and online courses. Three comments urged the Board to adopt unlimited online and correspondence course credits. One comment asked that the Board maintain the current continuing education requirements.

RESPONSE 1: The Board believes that continuing education which provides for interaction between and among the presenter(s) and the attendees is more likely to add to the knowledge and understanding of the attendee than continuing education where no such interaction is available. The Board notes that historically it has allowed only 10% of the required credits (two credits) to be earned through the passive medium of audio or video tapes. The Board further notes that historically, it has only allowed 20% of the

required credits (four credits) to be earned through the somewhat more interactive activity of online courses. The Board believes that correspondence courses do not provide any greater level of interaction than do online courses, and that correspondence courses and online courses should be treated equally. Accordingly, the Board declines to adopt the suggestion of some of the commenters to allow unlimited credit for self-study via online or correspondence courses, as well as the suggestion to leave the requirements unchanged.

COMMENT 2: One comment was received that opposed the amendment of ARM 8.42.410 regarding foreign graduates. The comment asks that the Board not limit the number of credentialing agencies listed in the previous rule.

RESPONSE 2: The Board notes that the credentialing agencies that were eliminated from the previous rule were eliminated because they no longer perform credentialing tasks. The proposed rule updates this outdated list of credentialing agencies. If, in the future, other entities begin credentialing foreign graduates, the Board will consider adding those entities to those listed in the rule.

BOARD OF PHYSICAL THERAPY EXAMINERS
Brenda Mahlum, President

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State October 6, 2003.

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of New Rule I (ARM 8.61.408) and (ARM 8.61.1207), professional ethics codes	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On July 31, 2003, the Board of Social Work Examiners and Professional Counselors published MAR Notice No. 8-61-18 regarding the proposed adoption of the above-stated rule relating to ethics codes at page 1613 of the 2003 Montana Administrative Register, issue no. 14.

2. A public hearing on the proposed adoption of the above-stated rule was held on August 21, 2003. The Board received two comments concerning the proposed adoption. The Board has thoroughly considered the comments and the Board's responses are as follows:

COMMENT NO. 1: One commenter was in favor of the proposed new ethics rule and asked for the reason behind the rule's adoption.

RESPONSE NO. 1: The Board outlined the reasonable necessity of this rule adoption in the proposed rule notice. The rule adoption is necessary to comply with a statutory requirement that the Board establish professional ethics for both licensed professional counselors and social workers, as recommended in a legislative audit.

COMMENT NO. 2: A commenter suggested amending section (2)(a)(vii) of the New Rule to include discrimination based upon sexual orientation and marital status.

RESPONSE NO. 2: The Board based the anti-discrimination sections of the proposed ethics rule on section 49-1-102, Montana Code Annotated (MCA), which provides the basic civil right of Montanans to be free from discrimination. Currently, sexual orientation is not considered a protected class under Montana law. Marital status is a protected class. The Board will adopt the New Rule with the suggested change to include discrimination based upon marital status.

3. Currently the rules for licensed clinical social workers and licensed professional counselors are in separate subchapters within the Board's administrative rules. To avoid confusion among licensees, the Board finds it is necessary at this time to place the ethics rule at two different locations within the Board's rules. Although the rule will appear in two places, the rules are identical. The Department expects that

when the Board's rules are transferred from ARM Title 8, (Department of Commerce), to ARM Title 24, (Department of Labor and Industry), only one ethics rule, pertaining to all licensees under the Board's jurisdiction, will be transferred.

4. After considering the comments, the Board has adopted NEW RULE I as ARM 8.61.408 and as ARM 8.61.1207, with the following changes (stricken matter interlined, new matter underlined):

NEW RULE I (8.61.408) CODE OF ETHICS - LICENSED PROFESSIONAL COUNSELORS AND LICENSED CLINICAL SOCIAL WORKERS

(1) through (2)(a)(vi) remain as proposed.

(vii) discriminate in the provision of services on the basis of race, creed, religion, color, sex, physical or mental disability, marital status, age or national origin;

(viii) through (2)(b) remain as proposed.

NEW RULE I (8.61.1207) CODE OF ETHICS - LICENSED PROFESSIONAL COUNSELORS AND LICENSED CLINICAL SOCIAL WORKERS

(1) through (2)(a)(vi) remain as proposed.

(vii) discriminate in the provision of services on the basis of race, creed, religion, color, sex, physical or mental disability, marital status, age or national origin;

(viii) through (2)(b) remain as proposed.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
Mary Meis, Acting Chair

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

Certified to the Secretary of State October 6, 2003.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 24.29.2831, relating to collection of payments and penalties from uninsured employers	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 28, 2003, the Department of Labor and Industry published MAR Notice No. 24-29-173 regarding the proposed amendment of ARM 24.29.2831, relating to collection of payments and penalties from uninsured employers, at page 1838 of the 2003 Montana Administrative Register, Issue Number 16.

2. On September 22, 2003, the Department held a public hearing in Helena. Members of the public attended and made oral comments. No written comments were received prior to the closing of the comment period on September 25, 2003.

3. After consideration of the comments, the Department has amended ARM 24.29.2831 exactly as proposed.

4. The Department has thoroughly considered the comment made. The comment received, and the Department's response, is as follows:

Comment 1: A representative of Collection Bureau Services appeared and spoke in support of the proposed changes and commended the UEF for its support of businesses who comply with Workers' Compensation Law.

Response 1: The Department thanks the commenter for their support and commendation.

/s/ MARK CADWALLADER	/s/ WENDY J. KEATING
Mark Cadwallader,	Wendy J. Keating, Commissioner
Alternate Rule Reviewer	DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 6, 2003.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 24.29.4301, 24.29.4303, 24.29.4307, 24.29.4311, 24.29.4314, 24.29.4317, 24.29.4321, and 24.29.4329, relating to the reporting of workers' compensation data	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 14, 2003, the Department of Labor and Industry published MAR Notice No. 24-29-172 regarding the proposed amendment of the above-stated rules relating to the reporting of workers' compensation data, at page 1768 of the 2003 Montana Administrative Register, Issue Number 15.

2. On September 10, 2003, a public hearing was held in Helena. No oral comments were received from members of the public, but agency personnel offered testimony. In addition, a number of written comments were received prior to the closing of the comment period on September 19, 2003.

3. After consideration of the comments, the Department has amended ARM 24.29.4301, 24.29.4303, 24.29.4307, 24.29.4311, 24.29.4314, 24.29.4317, 24.29.4321, and 24.29.4329 exactly as proposed.

4. The Department has thoroughly considered all of the comments made. The comments received, and the Department's responses, are as follows:

Comment 1: A commenter suggested adding the phrase "fatal data error" to the language of ARM 24.29.4321(2) and (3)(b).

Response 1: The Department believes the current language in the rule addresses the concerns of the commenter without the need for change. Under ARM 24.29.4321, the Department notifies reporting parties that they need to resubmit a report when it contains a data error that requires correction. The word "fatal" is a term of art not currently used or defined in statute or in the administrative rules. Additionally, Montana uses the national IAIABC Release 1 EDI standards for electronic submission of workers' compensation claims information. The term "fatal" is contained in new language proposed for the IAIABC Release 3 version, which has not yet been finalized or implemented.

Comment 2: A commenter requested the addition of language to ARM 24.29.4321 requiring claims reports for Plan 1 insurers to be submitted directly to the insurer or the third party

administrator. The commenter was concerned that First Reports of Injury (FROIs) sent directly to the Department creates delays in investigation and action on claims.

Response 2: The specific change requested would require a statutory change to Section 39-71-601, MCA, which currently allows claimants to submit signed claims to their employer, the insurer, or the Department. The Department does not have authority to change statutory provisions. However, the Department thanks the commenter for bringing this issue to its attention, and will review its internal processes to see if any changes could be made that would minimize delays.

Comment 3: A commenter expressed full support for the proposed changes.

Response 3: The Department thanks the commenter for reviewing and supporting proposed administrative rule changes.

Comment 4: A commenter supported the proposed rule amendments, but wanted to be sure there would be sufficient notice to allow time for reporting parties to make the necessary changes to their systems.

Response 4: The Department understands that there could be a lag between the time these amendments become effective and when users can complete the system changes required to incorporate the rule changes into their software and/or hardware. The Department will allow a reasonable time for users to make any needed changes, and is willing to take into account any special difficulties that a user may have.

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 6, 2003.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.301.201, 24.301.202, 24.301.203, 24.301.204, 24.301.205, 24.301.206, 24.301.207, 24.301.208, 24.301.210, 24.301.211, 24.301.212, 24.301.213, 24.301.214, and 24.301.215, and the adoption of New Rule I, all pertaining to building codes	)))))))))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On August 14, 2003, the Department of Labor and Industry published MAR Notice No. 24-301-170 regarding the public hearing on the proposed amendment and adoption of the above-stated rules relating to building codes, at page 1783 of the 2003 Montana Administrative Register, issue no. 15.

2. On September 9, 2003, the Department held a public hearing on the proposed amendments and new rule in Helena. Several comments were received by the September 12, 2003, deadline.

3. The comments received and the Department's responses are as follows:

COMMENT 1: One commenter sent in written comment regarding ARM 24.301.206, which addresses Staff Qualifications for local building code enforcement programs. The commenter stated that he feels that Fire Sprinkler Inspectors and Plan Reviewers should be included in this rule and be required to have appropriate certification.

RESPONSE 1: The Department acknowledges the comment. Plan Reviewers are included in ARM 24.301.206(3), referred to as plans examiners and states that plans examiners must be either plans examiner certified, or be building inspector qualified. Since no changes were proposed in ARM 24.301.206(3) it does not appear in this notice. Title 50, chapter 60, MCA, does not require inspection of fire sprinkler systems and the systems are inspected as part of the building inspection process by certified building inspectors.

COMMENT 2: A commenter stated with respect to ARM 24.301.201(1), local governments did not have to make local building codes applicable to "all non-exempt building construction." The commenter stated that local governments could pick and choose from the types of code enforcement, and leave some responsibilities to the department, as noted in

section (3) of the rule. The commenter further stated that a local government could choose to have a local enforcement program with respect to particular class of buildings, such as residential dwellings, and leave the other types of buildings subject to state jurisdiction.

RESPONSE 2: The Department agrees with the commenter's understanding of this rule and believes that the use of the word "may" in this rule makes the matter optional.

COMMENT 3: A commenter stated that he did not know what was meant by the term "non-exempt" in ARM 24.301.201.

RESPONSE 3: The term identifies building construction that is not otherwise exempt from compliance with state or locally adopted building codes. Various exemptions from building code compliance are found in statute, particularly section 50-60-102, MCA.

COMMENT 4: With respect to ARM 24.301.201(2), a commenter stated that the term "certified" should modify the phrase "cities, counties and towns" throughout the rules. The commenter noted that ARM 24.301.210 contemplates that a local government unit might become de-certified.

RESPONSE 4: The Department believes that the term "certified" by implication modifies city, county and town throughout the rules, whenever a city, county or town is operating a local building code enforcement program. The Department concludes that, in context, adding the term "certified" throughout the rule is unnecessary and would not substantially increase the clarity of the rules.

COMMENT 5: With respect to ARM 24.301.206(6), and the designation of a "commercial inspector", a commenter questioned who would be responsible for inspection of commercial buildings with more than 12,000 square feet of total floor space.

RESPONSE 5: The Department agrees with the commenter that the limitation to not more than 12,000 square feet is inappropriate. The Department has modified the rule accordingly.

COMMENT 6: A commenter questioned whether the Department needed an official map or certified legal description, as required in ARM 24.301.207(3)(a), when the local enforcement area is the same as defined by the boundary of the city, county or town.

RESPONSE 6: Although the Department agrees that an official map for countywide enforcement programs is not necessary the Department believes that an official map of the

city or town corporate limits needs to be maintained as a part of the record as corporate limits change from time to time.

COMMENT 7: A commenter stated that holding an engineering degree did not necessarily assure competence or qualification as a building code inspector.

RESPONSE 7: The Department notes that no single credential, including being a certified building inspector, provides an absolute guaranty of competence. The Department believes that local governmental entities, headed by elected officials accountable to the voters, are sufficiently motivated to make sure that building inspectors are competent to perform the job functions assigned to any given inspector.

COMMENT 8: A commenter stated that a six month period for a person newly hired as a building code inspector to get the required training (ARM 24.301.206(7)) was too long and would lead to the use of unqualified building code inspectors.

RESPONSE 8: Since the Department and most city, town and county programs use a six month probationary period for newly hired personnel, the Department believes that correlating certification with successful completion of the probationary period is appropriate.

COMMENT 9: A commenter stated that the use of the term "annual report", in conjunction with a three-year reporting cycle in ARM 24.301.207(4) is a misnomer.

RESPONSE 9: The Department agrees that the term "annual report" is somewhat of a misnomer, but concludes that certified building code enforcement program operators will understand the Department's desire to periodically obtain complete, updated information regarding all of the items contained in an annual report. The Department also notes that during the other two years of the three-year cycle, only items that changed since the prior annual report was filed need to be reported.

COMMENT 10: A commenter objected to the inclusion of the International Property Maintenance Code in ARM 24.301.215. The commenter questioned what was in the code, and whether it would lead to further fees and permits being required for maintenance work.

RESPONSE 10: The Department believes the inclusion of the International Property Maintenance Code is necessary for harmonization with the International Building Code. In addition, the Department believes it is clear that certified cities, counties and towns may not use building permit fees to carry out the provisions of this code.

COMMENT 11: A commenter stated that ARM 24.301.362(2) improperly imposes a need for a permit upon a private individual engaged in plumbing activities upon her or his own residence, in derogation of section 50-60-506, MCA.

RESPONSE 11: The Department has not proposed any changes to ARM 24.301.362 at this time, and the rule is not included in the Notice of Public Hearing. Accordingly, the Department cannot take action at this time with respect to ARM 24.301.362, as there has not been any public notice of a proposed change to the rule's text. The Department will keep the comment in mind, and take it into consideration if in the future any changes are proposed to ARM 24.301.362.

COMMENT 12: Another commenter stated that she agreed and echoed all the comments made by one of the other commenters.

RESPONSE 12: The Department acknowledges the comment and notes its responses to the comments summarized above.

4. The Department has amended ARM 24.301.201, 24.301.202, 24.301.203, 24.301.204, 24.301.205, 24.301.207, 24.301.208, 24.301.210, 24.301.211, 24.301.212, 24.301.213, 24.301.214, and 24.301.215 as proposed and adopted NEW RULE I (24.301.209) as proposed.

5. The Department has amended ARM 23.301.206 with the following changes, stricken matter interlined, new matter underlined:

24.301.206 STAFF QUALIFICATION (1) through (5) remain as proposed.

(6) The types of buildings which may be inspected or plans examined by a particular certification classification shall be determined by the department utilizing the standards and recommendations of the entity administering the certification program. However, as a general rule, residential building inspector certification shall be acceptable for inspections of residential buildings containing less than five dwelling units. ~~Commercial inspector certification shall be acceptable for inspections of residential buildings containing less than five dwelling units and commercial buildings two stories or less and no more than 12,000 square feet of total floor space.~~

(7) and (8) remain as proposed.

AUTH: 50-60-203, 50-60-302, MCA
IMP: 50-60-302, MCA

6. As provided in the August 14, 2003, Notice of Public Hearing, paragraph 10, although the rule amendments and new rule will be effective October 17, 2003, the Department intends that they apply to initial applications for certification of a city, county or town building code program

that is made after September 30, 2003, pursuant to the provisions of law contained in Chapter 443, Laws of 2003 (HB 640).

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State October 6, 2003.

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

In the matter of the amendment of ARM 37.62.1909 pertaining to child support guidelines regarding reasonable cost of health insurance	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On August 14, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-297 pertaining to the public hearing on the proposed amendment of the above-stated rule relating to child support guidelines regarding reasonable cost of health insurance, at page 1797 of the 2003 Montana Administrative Register, issue number 15.

2. The Department has amended ARM 37.62.1909 as proposed.

3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State October 6, 2003.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.12.101, 42.12.106, 42.12.111, and 42.12.132 relating to processing fees and fingerprinting requirements for liquor license applications	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 28, 2003, the department published MAR Notice No. 42-2-721 regarding the public hearing on the proposed amendment of the above-stated rules relating to processing fees and fingerprinting requirements for liquor license applications at page 1870 of the 2003 Montana Administrative Register, issue no. 16.

2. A public hearing was held on September 18, 2003, to consider the proposed amendments. Oral and written testimony received at the hearing is summarized as follows, along with the response of the department:

COMMENT NO. 1: Deb Rice, representing the Town Pump Corporation, testified that they were in favor of the rules, but offered an amendment to ARM 42.12.101(6)(e), which would allow on-site managers or employees to submit a completed personal history statement and be fingerprinted within 30 days of being employed. She stated that this would allow the corporation to obtain conditional approval and not cause any delays since they generally do not choose a manager until after the location has been approved.

RESPONSE NO. 1: The department agrees that this amendment is reasonable, but suggested that it is more appropriate in ARM 42.12.132, which deals with management agreements. Therefore, the department amends ARM 42.12.132 as shown below to address the suggestion of the Town Pump Corporation.

3. As a result of the comments received, the department amends ARM 42.12.132 with the following changes:

42.12.132 MANAGEMENT AGREEMENTS (1) remains the same.

(2) Within 30 days of employing the manager, the licensee must file ~~an original signed copy of the~~ WITH THE DEPARTMENT A SIGNED ORIGINAL OF THE written management agreement, A PERSONAL HISTORY STATEMENT, AND A COMPLETE SET OF FINGERPRINTS AS REQUIRED BY ARM 42.12.101, ~~with the department~~ that clearly discloses the following information:

(a) the manager's name, address, telephone number, mailing address, if different from street address, and one of the following:

(i) social security number for individuals; or
(ii) federal identification number for business;
(b) the amount of compensation; and
(c) the specific duties and responsibilities delegated to the manager by the licensee.
(3) through (4) remain the same.
AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-3-101 and 16-4-404, MCA

4. Therefore, the department amends ARM 42.12.132 with the amendments listed above and amends ARM 42.12.101, 42.12.106 and 42.12.111 as proposed.

5. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Linda M. Francis
LINDA M. FRANCIS
Director of Revenue

Certified to Secretary of State October 6, 2003

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO 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) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2003. This table includes those rules adopted during the period July 1, 2003 through September 30, 2003 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2003, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2002 and 2003 Montana Administrative Registers.

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