ISSUE NO. 8

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 2.21.121 through 2.21.123, 2.21.132 through 2.21.134, 2.21.136 through 2.21.139, 2.21.141 through 2.21.145, and 2.21.155 pertaining to Sick Leave	)))))))	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On June 4, 2004, the Department of Administration proposes to repeal ARM 2.21.121 through 2.21.123, 2.21.132 through 2.21.134, 2.21.136 through 2.21.139, 2.21.141 through 2.21.145, and 2.21.155 pertaining to Sick Leave.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m. on May 17, 2004, to advise us of the nature of the accommodation that you need. Please contact State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; telephone (406) 444-3871; Montana Relay Service 711; FAX (406) 444-0544; or E-mail hpeck@state.mt.us.

3. The Department proposes to repeal the rules as follows:

2.21.121 SHORT TITLE found at ARM page 2-557.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-615 and 2-18-618, MCA

2.21.122 DEFINITIONS found at ARM pages 2-557 through 2-558.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-615 and 2-18-618, MCA

2.21.123 POLICY AND OBJECTIVES found at ARM page 2-558.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.132 CONDITIONS FOR USE OF SICK LEAVE found at ARM page 2-563.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-615 and 2-18-618, MCA

2.21.133 ACCRUAL AND USE OF SICK LEAVE CREDITS found at ARM pages 2-563 through 2-564.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-615 and 2-18-618, MCA

2.21.134 CALCULATION OF SICK LEAVE CREDITS found at ARM page 2-564 through 2-565.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-615 and 2-18-618, MCA

2.21.136 RATE OF SALARY COMPENSATION found at ARM page 2-565.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-615 and 2-18-618, MCA

2.21.137 SICK LEAVE REQUESTS found at ARM pages 2-565 through 2-566.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.138 SICK LEAVE RECORDS found at ARM page 2-566.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.139 SICK LEAVE ON HOLIDAYS found at ARM page 2-566.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-615 and 2-18-618, MCA

2.21.141 LUMP SUM PAYMENT UPON TERMINATION found at ARM page 2-567.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.142 TRANSFERS found at ARM pages 2-567 through 2-568.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.143 ABUSE OF SICK LEAVE found at ARM page 2-568.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.144 INDUSTRIAL ACCIDENT found at ARM page 2-568.

AUTH: Sec. 2-18-604, MCA

IMP: Sec. 2-18-615 and 2-18-618, MCA

2.21.145 SICK LEAVE SUBSTITUTED FOR ANNUAL LEAVE found at ARM page 2-568.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-618, MCA

2.21.155 CLOSING found at ARM page 2-571.

AUTH: Sec. 2-18-604, MCA
IMP: Sec. 2-18-615 and 2-18-618, MCA

REASON: Through the passage of Senate Bill 117, the 58th regular session of the Montana Legislature amended the Montana Administrative Procedure Act at 2-4-102(11), MCA. The Legislature clarified that rules concerning the internal management of state government are excluded from the Montana Administrative Procedure Act provided they do not affect the private rights or procedures available to the public. The Department of Administration believes the sick leave rules only concern the implementation of sick leave for state employees; they have no effect on the general public. Therefore, in the interests of administrative efficiency and cost savings, it is necessary to repeal these rules from ARM.

4. Concerned persons may submit their data, views or arguments in writing to Hal Peck, State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; or E-mail hpeck@state.mt.us. Comments must be received no later than May 20, 2004.

5. If persons who are directly affected by the proposed repeal wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Hal Peck, State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; or E-mail hpeck@state.mt.us to be received no later than 5:00 p.m. May 20, 2004.

6. If the Department of Administration receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected is greater than 25 based on the number of state employees.

7. The Department of Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. 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 personnel rules. Such written request may be mailed or delivered to Hal Peck, Department of Administration, State Personnel Division, P.O. Box 200127, Helena, MT 59620-0127; E-mailed to hpeck@state.mt.us; or made by completing a request form at any rules hearing held by the Department of Administration.

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

By: */s/ Steve Bender*
Steve Bender, Acting Director,
Department of Administration

By: */s/ Dal Smilie*
Dal Smilie, Rule Reviewer

Certified to the Secretary of State April 12, 2004.

BEFORE THE MONTANA PROMOTION DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of ARM 8.119.101 pertaining to the Tourism Advisory Council	)	NOTICE OF PROPOSED AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 24, 2004, the Montana Promotion Division proposes to amend the above-stated rule pertaining to the Tourism Advisory Council.

2. The Department of Commerce 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 no later than 5:00 p.m., May 5, 2004, to advise us of the nature of the accommodation that you need. Please contact Anna Marie Moe, Montana Promotion Division, 301 S. Park Avenue, PO Box 200533, Helena, Montana 59620-0533; telephone (406) 841-2797; facsimile (406) 841-2871; TDD (406) 841-2702; e-mail to amoe@state.mt.us.

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

8.119.101 TOURISM ADVISORY COUNCIL (1) remains the same.

(2) The tourism advisory council ~~hereby~~ incorporates by reference the guide entitled "Regulations and Procedures for Regional/CVB Tourism Organizations, February ~~2003~~ 2004," setting forth the regulations and procedures pertaining to the distribution of lodging facility use tax revenue. The guide is available for public inspection during normal business hours at the Montana Promotion Division, Department of Commerce, 301 S. Park Avenue, Helena, Montana 59620. Copies of the guide are available on request.

(3) Distribution of funds to regional nonprofit tourism corporations and to nonprofit convention and visitors' bureaus is contingent upon compliance with the "Regulations and Procedures for Regional/CVB Tourism Organizations, February ~~2003~~ 2004."

AUTH: Sec. 2-15-1816, MCA
IMP: Sec. 2-15-1816, MCA

REASON: It is reasonably necessary to amend this rule to provide clarification because the "2004 Regulations and Procedures for the Regional/CVB Tourism Organizations" have been revised.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Anna Marie Moe, Montana Promotion Division, Department of Commerce, 301 S. Park Avenue, PO Box 200533, Helena, Montana 59620-0533, by facsimile to (406) 841-2871, or by e-mail to amoe@state.mt.us to be received no later than 5:00 p.m., May 21, 2004.

5. If persons who are directly affected by the proposed amendment wish to present their data, views or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit the request along with any comments they have to Anna Marie Moe, Montana Promotion Division, Department of Commerce, 301 S. Park Avenue, PO Box 200533, Helena, Montana 59620-0533, by facsimile (406) 841-2871, or by e-mail to amoe@state.mt.us to be received no later than 5:00 p.m., May 21, 2004.

6. If the Division receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision 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. Ten percent of those persons directly affected has been determined to be 20 based on 10 Convention and Visitor Bureaus, six Tourism Regions and at least 184 potential applicants for grants of accommodations tax funds.

7. An electronic copy of this Notice of Proposed Amendment is available through the Department's site on the World Wide Web at http://commerce.state.mt.us. The Department strives to make the electronic copy of this Notice of Proposed Amendment 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 and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The Montana Promotion Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Division. 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 all Montana Promotion Division administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Montana Promotion Division, 301 S. Park Avenue, PO Box 200533, Helena, Montana 59620-0533 or by phone at (406) 841-2797, or may be made by completing a request form at any rules hearing held by the agency.

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

MONTANA PROMOTION 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 April 12, 2004.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment, adoption and repeal of rules in Title 17, chapter 24, subchapters 3 through 13 pertaining to the Montana Strip and Underground Mine Reclamation Act	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION AND REPEAL (STRIP MINING)

TO: All Concerned Persons

1. On May 26, 2004, at 1:00 p.m., the Board of Environmental Review will hold a public hearing in the Lewis Room, Student Union Building, Montana State University-Billings, 1500 University Drive, Billings, Montana, to consider the proposed amendment, adoption and repeal of the rules listed in paragraph 2.

2. The Board is proposing to amend ARM 17.24.301 through 17.24.306, 17.24.308, 17.24.312, 17.24.313, 17.24.315, 17.24.321, 17.24.322, 17.24.324, 17.24.401, 17.24.404, 17.24.405, 17.24.412, 17.24.413, 17.24.416, 17.24.427, 17.24.501, 17.24.515, 17.24.520, 17.24.522, 17.24.523, 17.24.601, 17.24.602, 17.24.603, 17.24.605, 17.24.609, 17.24.623, 17.24.624, 17.24.626, 17.24.633 through 17.24.636, 17.24.638, 17.24.639, 17.24.642, 17.24.645, 17.24.646, 17.24.701 through 17.24.703, 17.24.711, 17.24.714, 17.24.716 through 17.24.718, 17.24.723 through 17.24.726, 17.24.751, 17.24.761, 17.24.762, 17.24.815, 17.24.821, 17.24.823, 17.24.832, 17.24.901, 17.24.903, 17.24.911, 17.24.924, 17.24.927, 17.24.930, 17.24.932, 17.24.1001, 17.24.1002, 17.24.1003, 17.24.1017, 17.24.1018, 17.24.1104, 17.24.1106, 17.24.1108, 17.24.1109, 17.24.1116, 17.24.1125, 17.24.1129, 17.24.1131, 17.24.1132, 17.24.1133, 17.24.1201, 17.24.1202, 17.24.1206, 17.24.1211, 17.24.1212, 17.24.1219, 17.24.1225, 17.24.1226, 17.24.1250, 17.24.1255, 17.24.1263, and 17.24.1301; adopt New Rule I; and repeal ARM 17.24.323, 17.24.719, 17.24.720, 17.24.728, 17.24.730, 17.24.732, 17.24.733, 17.24.824 through 17.24.826.

3. 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., May 19, 2004, 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.

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

17.24.301 DEFINITIONS The following definitions apply to all terms used in the Strip and Underground Mine Reclamation Act and subchapters 3 through 13 of this chapter:

(1) through (5) remain the same.

(6) "Adjacent area" ~~means land located outside the permit area or mine plan area, depending on the context in which adjacent area is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by the Act may be adversely impacted by strip or underground mining and reclamation operations~~ is defined in 82-4-203, MCA, as "the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings."

(7) through (10) remain the same.

(11) "~~Alternate reclamation~~ Alternative postmining land use" is discussed in 82-4-232(7) and (8), MCA.

(12) remains the same.

(13) "Approximate original contour" ~~means~~ is defined in 82-4-203, MCA, as "that surface configuration achieved by backfilling and grading of ~~disturbed~~ the mined area~~s~~ so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to ~~disturbance~~ mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, ~~waste piles,~~ and coal refuse piles ~~depressions (except as provided in ARM 17.24.503(1))~~ eliminated~~.~~, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased;

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected as necessary to support postmining land uses within the area affected and the adjacent area; and

(d) the reclaimed surface configuration is appropriate for the postmining land use."

(14) through (25) remain the same.

(26) "Community or institutional building" ~~is defined in ARM 17.24.1132(1)(d)~~ means any structure, other than a public building or a dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural,

historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(27) through (32) remain the same.

(33) "Diversion" means a channel, embankment, or other manmade structure constructed to divert ~~water from 1 area to another~~ undisturbed runoff around an area of disturbance and back to an undisturbed channel.

(34) and (35) remain the same.

(36) "Dwelling" means a building inhabited by or useful for habitation by a person or persons.

(36) remains the same, but is renumbered (37).

~~(37)~~ (38) "Ephemeral ~~stream~~ drainageway" ~~means~~ is defined in 82-4-203, MCA, as "a ~~stream which~~ drainageway that flows only in ~~direct~~ response to precipitation in the immediate watershed or in response to the melting of a cover of snow or ice~~,~~ and ~~which has a channel bottom that~~ is always above the local water table."

(38) through (44) remain the same, but are renumbered (39) through (45).

(46) "Good ecological integrity" means that the complex of community of organisms and its environment functioning as an ecological unit possesses components and processes in good working order. Pastureland and cropland managed in accordance with county or local conservation district or state or federal best management practices (resource management strategies, such as normal husbandry practices, used to manage or protect a resource and promote ecological and economic sustainability) generally reflect good ecological integrity with regard to such land uses.

(45) through (47) remain the same, but are renumbered (47) through (49).

~~(48)~~ (50) "Higher or better uses" ~~means~~ is defined in 82-4-203, MCA, as "postmining land uses that have a higher economic value or ~~nonmonetary~~ noneconomic benefit to the landowners or the ~~public~~ community than the premining land uses."

(49) and (50) remain the same, but are renumbered (51) and (52).

~~(51)~~ (53) "Historically used for cropland" means:

(a) lands that have been used for cropland for any ~~5~~ five years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing, through resale, lease or option, strip or underground coal mining and reclamation operations; ~~or~~

(b) lands that the department determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific ~~5~~ five-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved~~.~~; or

(c) lands that would likely have been used for cropland for any five or more years out of the 10 years immediately preceding such acquisition but for the same fact of ownership or control of the land as in (53)(a) unrelated to the productivity of the land.

~~(52)~~ (54) "Hydrologic balance" ~~means~~ is defined in 82-4-203, MCA, as "the relationship between the quality and quantity of water ~~in the hydrologic regime with respect to~~ inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir, ~~under all seasonal conditions. It~~ and encompasses~~, but is not limited to,~~ the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage as they relate to uses of land and water within the area affected by mining and the adjacent area."

(53) through (56)(d) remain the same, but are renumbered (55) through (58)(d).

~~(57)~~ (59) "Incidental boundary ~~change~~ revision" means a change in the permit boundary in which a few acres, generally less than ~~10~~ 100, insignificant in impact relative to the entire operation, are added to or subtracted from the permit area for the purposes of associated disturbance, but not for mining. For administrative purposes, an incidental boundary ~~change~~ revision is considered a minor revision.

(58) through (61) remain the same, but are renumbered (60) through (63).

~~(62)~~ (64) "Land use" ~~means~~ is defined in 82-4-203, MCA, as "specific uses or management-related activities, rather than the ~~vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur~~ vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential."

(a) remains the same.

(b) ~~"Special use pasture" means land that has been seeded or interseeded to native, introduced, or a combination of native and introduced forage species of limited diversity that provides special or seasonal use for livestock on a more intensively managed basis than that which would occur if the land was grazing land as defined below. Special use pasture may include the occasional cutting of the forage species for livestock feed. Land that is used for facilities in support of special use pasture and is adjacent to, or an integral part of, the use is also included.~~ "Pastureland" is defined in 82-4-203, MCA, as "land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed."

(c) "Grazing land" ~~means~~ is defined in 82-4-203, MCA, as "land~~, including both~~ used for grasslands and forest lands~~,~~ where the indigenous vegetation is actively managed for

livestock grazing or browsing or occasional hay production." ~~by a combination of livestock and wildlife. Land that is used for facilities in support of such operations and is adjacent to, or an integral part of, these operations is also included.~~

(d) ~~"Commercial forest land" means land producing or being managed to produce stands of industrial wood that will be utilized as such. Commercial forest land must also produce or be managed to produce in excess of 20 cubic feet per acre per year of industrial wood. Currently inaccessible and inoperable areas are included, except where such areas are small and unlikely to become suitable for production of industrial wood in the foreseeable future. Land that is used for facilities in support of forest harvest and management operations and is adjacent to, or an integral part of, these operations is also included.~~ "Forestry" is defined in 82-4-203, MCA, as "land used or managed for the long-term production of wood, wood fiber, or wood-derived products."

(e) through (f)(ii) remain the same.

(g) "Recreation" ~~means~~ is defined in 82-4-203, MCA, as ~~use of~~ "land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas ~~for which specific design or access is provided~~ for less intensive uses, such as hiking, canoeing, and other undeveloped recreational uses."

(h) "Fish and wildlife habitat" ~~means water or~~ is defined in 82-4-203, MCA, as "land dedicated ~~used~~ wholly or partially ~~in~~ to the production, protection, or management of species of fish or wildlife."

(i) remains the same.

(63) through (64)(c) remain the same, but are renumbered (65) through (66)(c).

(67) "Material damage" is defined in 82-4-203, MCA, as "with respect to protection of the hydrologic balance, degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage."

~~(65)~~ (68) "Materially damage the quantity or quality of water" means, with respect to alluvial valley floors, to degrade or reduce by strip or underground coal mining or reclamation operations, the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support agricultural activities. ~~(See also (8), (58) and (120) of this rule.)~~ The term "material damage" may be applied to values other than those associated with alluvial valley floors.

(66) through (86) remain the same, but are renumbered (69) through (89).

~~(87)~~ (90) "Prime farmland" ~~means those lands which are defined in 7 CFR 657, as amended, and 82-4-203, MCA, and which~~

~~have also been "historically used for cropland" as that phrase is defined in (47) of this rule~~ is defined in 82-4-203, MCA, as "land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes."

(88) through (99) remain the same, but are renumbered (91) through (102).

~~(100)~~ (103) "Reference area" ~~means~~ is defined in 82-4-203, MCA, as "a land unit maintained under ~~approved~~ appropriate management for the purpose of measuring vegetation ground cover, ~~production~~ productivity, ~~density, utility,~~ and plant species diversity that ~~is~~ are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area ~~as determined by premining inventories~~."

(101) through (103)(b) remain the same, but are renumbered (104) through (106)(b).

~~(104)~~ (107) "Road" means a surface right-of-way for purposes of travel by land vehicles used in prospecting or strip or underground mining or reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access, haul, and ramp roads constructed, used, reconstructed, improved or maintained for use in prospecting or strip or underground mining operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. ~~The term does not include pioneer or construction roadways that are used for part of the road construction procedure and that are promptly replaced by roads associated with the prospecting or mining operation in the identical right-of-way as the pioneer or construction roadway.~~

(a) remains the same.

(b) "Haul road" means a road ~~leading from the tipple, processing, or mine complex areas onto or through areas that have been mined or are being mined~~ used for more than six months to transport coal, soil, or spoil.

(c) remains the same.

(d) "Ramp road" means a road leading from the pit ~~into~~ to the haul road.

(105) through (139) remain the same, but are renumbered (108) through (142).

(143) "Wildlife habitat enhancement feature" is defined in 82-4-203, MCA, as "a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species including, but not limited to, tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches."

(140) through (141)(b) remain the same, but are renumbered (144) through (145)(b).

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-203, MCA

REASON: The proposed amendments to the definition of the terms set forth in (6), (13), (37), (48), (52), and (100) (as those sections were numbered without the proposed amendments) reflect statutory changes to those definitions enacted by the 2003 Legislature in HB 373. (Chapter 204, Laws of 2003)

The proposed amendment to (11) reflects the replacement of "alternative postmining land use" for "alternate reclamation" by the 2003 Legislature in HB 373.

The proposed amendment to (26) defines "community or institutional building" to clearly identify types of buildings subject to the blasting protections of ARM 17.24.624.

The proposed amendment to (33) provides a more precise and accurate definition of the term "diversion" as the term is used in these rules.

The proposed addition of (36) defines "dwelling" to clearly identify types of buildings subject to the blasting protections of ARM 17.24.624. Buildings useful for habitation are included in the definition to protect buildings with value that are temporarily vacant in addition to those currently occupied.

The proposed addition of (46) is needed to adequately and appropriately describe the desired condition for reference and reclaimed areas. Following an extensive literature review, it was determined that this term is regularly accepted, used and recommended by a variety of professional ecologists. The term emphasizes the combination of ecological, social and economic factors at different temporal and spatial scales. The desired result is the maintenance of a diversity of life forms, ecological processes and human cultures. "Good" is a commonly and conventionally accepted minimum standard insisted on by competent land managers and by land management agencies as a condition and/or goal necessary to sustain the utility and economic value of vegetation, land uses and ecosystems. The term "ecological integrity" is consistent with vegetation, land and resource valuation systems being commonly used by federal and state land management agencies, academia, consultants and private land managers.

The proposed amendment adding (53)(c) conforms the Montana Program with federal requirements as required by the Office of Surface Mining in Federal Register Notice of January 22, 1999, 30 CFR 926.16(k). This language is contained in the federal definition, 30 CFR 701.5, and Montana is required to adopt the same definition.

The proposed amendment to (57) (renumbered (59)) standardizes the use of the term "revision." The proposed amendment also increases the acreage that may be considered an incidental boundary revision. Incidental boundary revisions are exempt from public notice and comment provisions applicable to permit amendments. For strip mines, 100 acres is a small area

compared to the total mine acreage. Furthermore, incidental boundary revisions may not be used to increase the mined area. They only involve associated disturbances that have less impact than mining.

The proposed amendment to (62) reflects the 2003 Legislature's enactment of HB 373, substituting "pastureland" for "special use pasture" and "forestry" for "commercial forest lands" and redefining "pastureland," "grazing land," "forestry," "recreation," and "fish and wildlife habitat."

The proposed addition of (67) reflects the definition of "material damage with respect to hydrology" enacted by the 2003 Legislature in HB 373.

The proposed amendment to (65) deletes unnecessary references to other provisions of the rule.

The proposed amendment to (87) replaces the former definition of "prime farmland" with the current definition enacted by the 1995 Legislature's passage of SB 234.

The proposed amendment to (104) deletes the exclusion of pioneer or construction roads from the definition of "roads" to conform the Montana program to federal requirements in 30 CFR 701.5, 30 CFR 816.150(a)(2)(ii) and 30 CFR 817.150(a)(2)(ii). The Office of Surface Mining required this amendment in Federal Register Notice of January 22, 1999. The proposed amendment to (104)(b) provides a new definition of "haul road" that is more easily understood and applied and conforms to federal requirements.

Proposed new (143) sets forth the statutory definition of "wildlife habitat enhancement feature" for convenient reference.

17.24.302 FORMAT, DATA COLLECTION, AND SUPPLEMENTAL INFORMATION (1) Information set forth in the application must be accurate, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the department.

(2) All tests, analyses, ~~or~~ surveys, and data collection carried out pursuant to these rules must be performed or certified by a qualified person using scientifically valid techniques approved by the department and must be carried out at appropriate times and under appropriate conditions.

(3) through (9) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, MCA

REASON: The proposed amendments to (1) and (2) add language to ensure that the quality of the information and data submitted in a permit application meets conventionally accepted standards.

17.24.303 LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION (1) Each application must contain, in any format prescribed by the department, the following information:

(1) through (7) remain the same, but are renumbered (a) through (g).

(a) through (e) remain the same, but are renumbered (i) through (v).

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

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

(9) through (12) remain the same, but are renumbered (i) through (l).

(a) through (e) remain the same, but are renumbered (i) through (v).

(13) remains the same, but is renumbered (m).

(a) through (e) remain the same, but are renumbered (i) through (v).

(14) remains the same, but is renumbered (n).

~~(15)(a)~~ (o)(i) whenever the private mineral estate to be strip mined has been severed from the private surface estate, an applicant shall also submit:

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

~~(ii)(A)~~ (B)(I) a copy of the conveyance that expressly grants or reserves the right to extract mineral by those methods; or

(B) remains the same, but is renumbered (II).

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

(16) through (20) remain the same, but are renumbered (p) through (t).

(a) through (d) remain the same, but are renumbered (i) through (iv).

(21) and (22) remain the same, but are renumbered (u) and (v).

~~(23)~~ (w) a copy of the proposed newspaper advertisement of the application and proof of publication of the notice after it is published as required in ARM 17.24.401(3); and

~~(24)~~ (x) a map of the mine plan area showing the areas upon which strip or underground mining occurred:

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

~~(c)~~ (iii) after May 3, 1978, and prior to April 1, 1980; ~~and~~

~~(d)~~ (iv) after April 1, 1980, and before January 13, 1989~~.~~; and

(v) after January 13, 1989, and before [effective date of this amendment].

(y) ~~This~~ The map of the mine plan area must also designate the areas from which coal removal had not commenced as of ~~January 13, 1989~~ [effective date of this amendment].

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, MCA

REASON: The proposed amendment to (23) (renumbered (w)) adds language to ensure that the Department has an opportunity to review and approve the notice for accuracy before it is published.

The proposed amendment adding (24)(v) (renumbered (x)(v)) is required so that the areas that are and are not subject to

these rule amendments are clearly depicted on the map of the mine plan area.

17.24.304 BASELINE INFORMATION: ENVIRONMENTAL RESOURCES

(1) The following environmental resources information must also be included as part of an application for a strip or underground mining permit:

(1) through (5) remain the same, but are renumbered (a) through (e).

~~(6)~~ (f) hydrologic and geologic descriptions pursuant to ~~(5) of this rule~~ (1)(e) including:

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

(i) and (ii) remain the same, but are renumbered (A) and (B).

~~(iii)~~ (C) a listing of all known or readily discoverable wells and springs and their uses located within ~~3~~ three miles downgradient from the proposed permit area and within ~~1~~ one mile in all other directions unless hydrologic conditions justify different distances;

~~(b)~~ (ii) a narrative and graphic account of surface water hydrology within the mine plan area and adjacent areas~~,~~ including, but not limited to:

~~(i)~~ (A) the name, location, use, and description of all surface water bodies such as streams, lakes, ponds, springs, and impoundments; and

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

(A) and (B) remain the same, but are renumbered (I) and (II).

(c) and (d) remain the same, but are renumbered (iii) and (iv).

~~(7)(a)~~ (g)(i) a detailed description of all overburden and mineral materials (all materials other than soil) that will be handled during mining or backfilling operations. The description must include:

(i) through (v) remain the same, but are renumbered (A) through (E).

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

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

(a) through (d) remain the same, but are renumbered (i) through (iv).

~~(9)~~ (i) ~~vegetative~~ vegetation surveys as described in 82-4-222(2), MCA, of the Act, which must include:

~~(a)~~ (i) a ~~vegetative~~ vegetation map at a scale of 1" ~~inch equals~~ = 400' ~~feet~~ or as otherwise approved by the department, which delineates community types based on ~~2 or more~~ dominant species which by their structure, ~~number~~ density, or coverage, have the greatest functional influence on the type. Other methods for delineating community types may be used with prior approval by the department; and

~~(b)~~ (ii) a narrative describing the community types within the proposed permit area and within any proposed reference areas, and listing associated species and discussing environmental factors controlling or limiting the distribution of species~~.~~; ~~Current condition and trend must be discussed for~~

~~each community type or portion thereof if significant differences exist within a type; and~~

~~(c) a range site map;~~

~~(10)~~ (j) a narrative of the results of a wildlife survey. The operator shall contact the department ~~soon enough~~ at least three months before planning the wildlife survey to allow the department to consult state and federal agencies with fish and wildlife responsibilities to determine the scope and level of detail of information required in the survey to help design a wildlife protection and enhancement plan. At a minimum, the wildlife survey must include:

~~(a)~~ (i) a listing of ~~the~~ all fish and wildlife species ~~(including, but not limited to, birds, mammals, fishes, reptiles, and amphibians) utilizing the permit area, including any species on the threatened and endangered species list prepared by the US fish and wildlife service (threatened wildlife of the United States), and any other species identified through agency consultation as requiring special protection under state or federal law~~;

(b) through (e) remain the same, but are renumbered (ii) through (v).

~~(11)~~ (k) a soil survey according to standards of the national cooperative soil survey and the department describing all soils on the proposed permit area and their suitability for reclamation purposes. The soil survey must include the following information:

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

(i) through (iv) remain the same, but are renumbered (A) through (D).

~~(b)~~ (ii) a soils map acceptable to the department. The scale must be 1" = 400' unless otherwise altered or approved by the department. Enlarged aerial photographs may be used as a map base. The map or photograph must include:

~~(i)~~ (A) the soil mapping units, their boundaries, a legend of the soil mapping units and the estimated salvage depths of soils within each mapping unit, consistent with the information submitted under ARM 17.24.313~~(4)~~(1)(f);

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

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

~~(12)~~ (l) ~~a statement of~~ the condition, capability, ~~and~~ productivity, and history of use of the land and vegetation within the proposed permit area, including:

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

(i) through (iii) remain the same, but are renumbered (A) through (C).

(A) through (E) remain the same, but are renumbered (I) through (V).

(iv) remains the same, but is renumbered (D).

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, MCA

REASON: The proposed amendment to existing (6) is necessary to correct an internal cite to (5) which is being

renumbered (1)(e) in this amendment.

The proposed amendments to existing (6)(a)(iii) and (b)(i) require an application to contain uses of wells and springs so that the potential impacts on water sources used for domestic, agricultural, industrial or other legitimate purposes may be analyzed as required by ARM 17.24.314(3)(a)(iii).

The proposed amendments to (9)(a) (now (i)(i)) correct grammatical errors and replace the word "number" with more accepted and definite nomenclature used elsewhere in the rules.

The proposed amendments to existing (9)(b) and (9)(c) delete the requirement that applications contain information on range sites. Range site information is currently required by (9)(b) requesting current condition and trend information and (9)(c) requesting a range site map. Management by range sites is no longer a conventionally accepted method.

The proposed amendment to (10)(a) makes its provisions more concise. The addition of the term "all" is inclusive of all categories of wildlife that use the permit area on an incidental, seasonal or regular basis. Specific reference to special categories of species (i.e., threatened and endangered, species of special interest, or species using habitats of especially high value) is not needed. The 90-day requirement is added for definiteness. Ninety days are necessary to permit consultation to occur.

The proposed amendment to existing (12) deletes unnecessary language. The proposed amendment also adds a provision requiring historical information on land use and vegetation to facilitate implementation of HB 373 enacted by the 2003 Legislature. HB 373 amended 82-4-231(7), MCA, to provide that the postmining land use is to be the use that the land was capable of supporting before mining.

17.24.305 MAPS (1) The application must contain maps including the following information:

(a) through (i) remain the same.

(j) the lands proposed to be affected throughout the operation, including the pre-mine topography, and any change in a facility or feature to be caused by the proposed operations;

(k) through (z) remain the same.

(2) Maps must be prepared in accordance with the following procedures:

(a) Each map containing information pursuant to (1) ~~of this rule~~ must be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification must be signed and notarized in affidavit form. If the certification is submitted as a document separate from the map(s), it must be in affidavit form. The department may reject a map as incomplete if its accuracy is not so attested.

(b) Maps, plans, and cross-sections required under (1)(d), (e), (j), (k), (l), (m), (o), (p), (q), (s), ~~and~~ (t), (x), and (z) ~~of this rule~~ must be prepared by, or under the direction of, and certified by a qualified licensed professional engineer,

with assistance from experts in related fields, except that:

(i) maps and cross-sections required under (1)(d), (l), (m), (o), (p), (s), ~~and~~ (t), (x) and (z) ~~of this rule~~ may be prepared by, or under the direction of, and certified by a qualified licensed professional land surveyor with assistance from experts in related fields; and

(ii) through (3) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, MCA

REASON: The proposed amendment to (1)(j) requires the submission of information that is necessary to evaluate whether postmining topography plans are designed to meet approximate original contour requirements. A premine topography map was not previously required by rule.

The proposed amendment to (2)(a) covers the additional situation where a certification is contained in an attachment rather than on the face of the map. For veracity purposes, the attachment must take the form of a sworn statement.

The proposed amendments to (2)(b) and (2)(b)(i) conform the Montana program to federal regulations at 30 CFR 779.25, 780.14, and 783.25, requiring the additional maps to be certified.

17.24.306 BASELINE INFORMATION: PRIME FARMLAND INVESTIGATION (1) and (2) remain the same.

(3) If the lands in question have historically been used for cropland, the applicant shall, in consultation with the Montana state office of the U.S. natural resources conservation service, determine if any soils, characterized and described in accordance with ARM 17.24.304~~(11)~~(1)(k), on these lands meet the criteria of prime farmlands as contained in 7 CFR 657;

(a) and (b) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, MCA

REASON: This rule is being amended to correct an internal reference cite because of amendments being made in this rulemaking procedure to the rule cross-referenced.

17.24.308 OPERATIONS PLAN (1) Each application must contain a description of the ~~mining~~ operations proposed to be conducted during the life of the mine ~~within the proposed mine plan area,~~ including, at a minimum, the following:

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

~~(2)~~ (b) a narrative, with appropriate cross sections, design drawings and other specifications sufficient to demonstrate compliance with ARM 17.24.609 and applicable rules of subchapter 10, explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in ARM 17.24.762):

(a) through (e) remain the same, but are renumbered (i) through (v).

~~(f)~~ (vi) water and air pollution control facilities; ~~and~~

(vii) environmental monitoring and data gathering facilities or facilities or sites and associated access routes used for the gathering of subsurface data by trenching, drilling, geophysical or other techniques to determine the nature, depth, and thickness of all known strata, overburden, and coal seams; and

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

(3)(a) remains the same, but is renumbered (c).

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

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

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, 82-4-226, 82-4-231, MCA

REASON: The proposed amendment to (1) clarifies that the operations plan covers more activities than those associated with the actual process of mining and occurring in the mine plan area.

The proposed amendment to existing (2) adds a reference to applicable provisions of Subchapter 10 to require a plan of operation to cover prospecting facilities when an applicant seeks to transfer prospecting activities and facilities to the strip or underground mining permit pursuant to ARM 17.24.1001(7).

The proposed addition of (b)(vii) also specifies additional information that needs to be included in a plan of operations when prospecting activities and facilities are transferred to a strip or underground mining permit pursuant to ARM 17.24.1001(7).

17.24.312 FISH AND WILDLIFE PLAN (1) Each application must contain a fish and wildlife plan, consistent with ARM 17.24.751 that provides:

(a) a ~~statement~~ description of how the plan will minimize disturbances and adverse impacts on fish, wildlife, and related environmental values during mining and reclamation operations, how enhancement of these resources will be achieved, where practicable, and how the plan will comply with the Endangered Species Act of 1973, as amended. The plan must apply, at a minimum, to species and habitats identified in ARM 17.24.304~~(10)(a)~~(1)(j)(i) and ~~(c)~~(iii), and must cover the permit area and portions of adjacent areas as determined by the department pursuant to ARM 17.24.304~~(10)(e)(1)(j)(v). Nothing herein may be construed to weaken the requirement of 82-4-233(1)(a), MCA~~;

(b) a description of the wildlife habitat enhancement features that will be integrated with other land uses, pursuant to 82-4-232(9), MCA, and ARM 17.24.313;

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

~~(c)~~ (d) a statement explaining how the applicant will utilize impact control measures, management techniques, and annual monitoring methods to protect or enhance the following, if they are to be affected by the proposed activities:

(i) remains the same.

(ii) species such as eagles, migratory birds, other animals protected by state or federal law, and their habitats, and any other species identified through the consultation process pursuant to ARM 17.24.304~~(10)~~(1)(j);

(iii) remains the same.

(2) Upon request, the department shall provide the fish and wildlife resource information required in ARM 17.24.304~~(10)~~(1)(j), 17.24.312, and 17.24.751, as well as any other rule dealing with fish and wildlife, to the U.S. fish and wildlife service regional or field office for review. This information must be provided within 10 days of receipt of the request.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, 82-4-232, MCA

REASON: The proposed amendment to (1)(a) requires an applicant to provide more information about a fish and wildlife plan than is conveyed by the use of the term "statement." The proposed amendment also deletes a provision that is no longer necessary in light of the amendment to 82-4-233(1)(a), MCA, by the 2003 Legislature deleting a requirement that revegetated cover be capable of feeding wildlife to a comparable extent as the land prior to the mining operation.

The proposed addition of (1)(b) incorporates the statutory requirement that a reclamation plan include appropriate wildlife habitat enhancement features enacted by the 2003 Legislature and set forth in 82-4-232(9), MCA.

17.24.313 RECLAMATION PLAN (1) Each reclamation plan must contain a description of the reclamation operations proposed, including the following information:

(a) the proposed postmining land use pursuant to ARM 17.24.762;

~~(1)~~ (b) a detailed timetable for the estimated completion of each major step in the reclamation plan;

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

~~(3)~~ (d) a plan for backfilling, stabilization, compacting, and grading of the proposed permit area. The plan for backfilling must contain:

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

~~(b)~~ (ii) a narrative and cross-sections, or other means as approved by the department, showing the plan of highwall backfilling, reduction, or an alternative thereof, including the limits of buffer zone, consistent with the performance standards of ARM 17.24.501 and 17.24.515~~. An operator may propose alternate plans other than highwall reduction if the restoration will be consistent with the purposes of 82-4-232(7), MCA, and ARM 17.24.821 through 17.24.824~~;

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

~~(d)~~ (iv) a map showing the postmining topography that the applicant proposes to meet at the time of final bond release. This map must be prepared to reflect the performance standards~~. The map must be keyed to a cross-section or set of cross-sections, drawn to scale, and depict the removal of overburden and mineral and the replacement of the swelled spoil to demonstrate that the proposed postmining contours can be achieved~~; and

(v) a demonstration that the proposed postmining topography can be achieved. This demonstration must include a cross-section or set of cross-sections, or other method as approved by the department, to depict the removal of overburden and mineral and the replacement of the swelled spoil;

~~(e) a plan for the early detection of grading problems that would result in a final graded topography not consistent with the approved postmining contour plan. Upon detection of such a grading problem, the permittee must notify the department, in writing, within 10 working days. The notification must contain at a minimum a preliminary proposal for measures to remedy the problem;~~

(e) a drainage basin reclamation plan that demonstrates the feasibility of accomplishing postmining revegetation, land use and hydrologic requirements, and standards of ARM 17.24.634. This reclamation plan may be tailored to specific drainages or to classes of drainages, and may vary depending on but not limited to such factors as postmining land use, drainage basin size, flow characteristics, topographic position, and substrates;

~~(4)~~ (f) plans for removal, storage, and redistribution of soil, overburden, spoils, and other material in accordance with ARM 17.24.501, 17.24.502, 17.24.503, 17.24.504, 17.24.505, 17.24.507, 17.24.510, 17.24.514, 17.24.515, 17.24.516, 17.24.517, 17.24.518, 17.24.519, 17.24.520, 17.24.521, and ~~through~~ 17.24.522, and 17.24.701 through 17.24.703;

~~(a)~~ (i) These plans must include or reference other narratives in the application documenting how the information on the characteristics of the overburden and coal (ARM 17.24.304~~(7)~~(1)(g)) and soils (ARM 17.24.304~~(11)~~(1)(k))~~,~~ was utilized in developing the plans.

~~(b)~~ (ii) Using the soil survey information (see ARM 17.24.304~~(11)~~(1)(k)), the applicant shall propose estimated salvage depths for each lift of each soil component (series or phase) of each soil mapping unit.

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

(i) and (ii) remain the same, but are renumbered (A) and (B).

(iv) The applicant must submit plans for any necessary monitoring of soils, overburden, spoils, or other materials;

~~(5)~~ (g) a narrative of the method for revegetation including, but not limited to, a discussion of:

(i) revegetation types, including acreage of each;

(a) through (h) remain the same, but are renumbered (ii) through (ix).

~~(i)~~ (x) measures to be used to determine the success of revegetation, including the use of reference areas and/or technical standards in relation to the revegetation types;

(j) and (k) remain the same, but are renumbered (xi) and (xii).

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

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, 82-4-231, 82-4-232, 82-4-233, 82-4-234, MCA

REASON: The proposed amendment to (1) reflects the enactment of HB 373 by the 2003 Legislature. Sections 82-4-232(7) and (8) were amended to allow an operator to reclaim disturbed areas to the use that existed prior to mining or to a high or better use. Thus, the reclamation plan needs to specify the proposed postmining land use.

The proposed amendment to (1) (renumbered (b)) requires the proposed reclamation plan to contain a detailed reclamation timetable to facilitate meaningful Department review.

The proposed amendment to (4)(b) (renumbered (f)(ii)) provides an operator greater latitude in the presentation of highwall treatment in the reclamation plan and recognizes that reclamation methods other than reduction of the highwall may be appropriate under ARM 17.24.515. The proposed amendment also deletes references to a statute and rules that are no longer applicable because the enactment of HB 373 by the 2003 Legislature removed the concept of "alternative reclamation" from the Act.

The proposed amendments to (4)(d) and (e) (renumbered (f)(iv) and (v)) restate more directly the requirement that a reclamation plan contain a demonstration that the postmining topography can be achieved and move that provision from (d) to new (e).

Subection (e), a provision addressing the early detection of grading problems, is proposed for deletion. That subject is now addressed in ARM 17.24.501 in this proposal.

The proposed addition of (e) requires an appropriate level of information on drainage basin reclamation because it is an integral part of the overall reclamation plan. This provision replaces the design requirements for drainage channels now found in ARM 17.24.634(2).

The proposed amendment to (4) (renumbered (f)) adds "spoils" to give a more complete list of materials that are subject to the provision. Spoils consist of removed overburden and are the largest volume of materials to be handled. The proposed amendment also adds (iv) requiring additional necessary monitoring information.

The proposed addition of (g)(i) requires additional information that is fundamental to a revegetation plan because vegetation types must be appropriate for the approved postmining land use.

The proposed amendment adding (g)(x) requires additional

information. The Department must know what measures the applicant proposes to determine revegetation success when reviewing the proposed reclamation plan.

17.24.315 PLAN FOR PONDS AND EMBANKMENTS (1) Each application must include a general plan for each proposed sedimentation pond and water impoundment within the proposed mine plan areas.

(a) Each general plan must:

(i) be prepared by, or under the direction of, and certified by a qualified ~~registered~~ licensed professional engineer, experienced in designing impoundments;

(ii) through (v) remain the same.

(b) Each detailed design plan for a structure that meets or exceeds the size or other criteria of the mine safety and health administration, 30 CFR 77.216(a), or meets the Class B or C criteria for dams in USDA soil conservation service Technical Release No. 60 (210-VI-TR60, October 1985, as revised through January 1991), "Earth Dams and Reservoirs", (TR-60) must:

(i) be prepared by, or under the direction of, and certified by a qualified ~~registered~~ licensed professional engineer with assistance from experts in related fields such as geology, surveying, and landscape architecture. The certifying engineer must have experience designing impoundments;

(ii) through (c) remain the same.

(d) Each detailed design for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) or the criteria for Class B or C dams in TR-60, must:

(i) be prepared by, or under the direction of, and certified by a qualified ~~registered~~ licensed professional engineer. The certifying engineer must have experience in designing impoundments;

(ii) through (4) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, MCA

REASON: The proposed amendments throughout this rule change the phrase "registered professional engineer" to "licensed professional engineer" to conform with Montana Board of Professional Engineers and Land Surveyors terminology.

17.24.321 TRANSPORTATION FACILITIES PLAN (1) Each application must contain a description of each ~~haul road, access~~ road, conveyor, and railroad loop to be constructed, used, or maintained within the proposed permit area. The description must include the following as appropriate for the type of construction:

(a) a map, ~~appropriate~~ cross-sections, and specifications for each road including width, gradient, surface, cut, embankment, culvert, bridge, drainage ditch, and drainage structure;

(b) a report of ~~appropriate~~ geotechnical analysis, where approval of the department is required for alternative specifications;

(c) remains the same.

(d) a description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert for approval by the department under ARM 17.24.605 ~~(3)(a)(i)~~ (6);

(e) through (2) remain the same.

(3) The plans and drawings for each haul road, access road, conveyor, ~~and~~ railroad loop, and low-water crossing of perennial and intermittent streams required under (1) and (2) must be prepared by, or under the direction of, and certified by a qualified ~~registered~~ licensed professional engineer with experience in the design and construction of such facilities. The certification must state that the designs meet the performance standards of ARM 17.24.601, 17.24.602, 17.24.603, 17.24.605 ~~through 17.24.606~~, and current prudent engineering practices.

(4) remains the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, MCA

REASON: The proposed amendment to (1) conforms the Montana program to federal regulations by requiring designs on all roads, not just haul or access roads. See 30 CFR 780.37 and 784.24. The proposed amendment also conditions the information requested in the ensuing subsections to that which is applicable to the type of transportation facility constructed.

The proposed amendments to (1)(a) and (b) delete the term "appropriate" which is rendered unnecessary by the proposed amendment to (1).

The proposed amendment to (1)(d) corrects a rule citation.

The proposed amendment to (3) clarifies the plans and maps subject to its provisions by citing (1) and (2). The proposed amendment also changes the phrase "registered professional engineer" to "licensed professional engineer" to conform with Montana Board of Professional Engineers and Land Surveyors terminology.

17.24.322 GEOLOGIC INFORMATION AND COAL CONSERVATION PLAN

(1) remains the same.

(2) The plan must include:

(a) the results of all test borings, evaluations, observations, and analyses, including the following:

(i) through (vii) remain the same.

(viii) location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed mine plan and adjacent areas; and

(ix) location and extent of existing or previously strip mined areas within the proposed mine plan area; ~~and~~

~~(x) location and dimensions of existing areas of spoil,~~

~~waste, and garbage and other debris disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;~~

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

(4) For an operator with a federal resource recovery and protection plan, the department may review all applicable coal recovery information retained by the bureau of land management, in lieu of or in addition to the information requirements under (3).

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

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, MCA

REASON: The proposed amendment adds the phrase "geologic information" to the title to more appropriately describe the scope of the rule.

The proposed deletion of (2)(a)(x) is necessary because it is redundant, asking for the same information required in an operations plan or reclamation plan under ARM 17.24.308 and 17.24.313, respectively.

The proposed addition of (4) provides for an alternative source of relevant information for Department review that may preclude the need for the applicant to generate new or additional documents.

17.24.324 PRIME FARMLANDS: SPECIAL APPLICATION REQUIREMENTS (1) If land within the proposed permit area is identified as prime farmland under ARM 17.24.306, the applicant shall submit a plan for the mining and restoration of the land. Each plan must contain the following:

(a) through (d) remain the same.

(e) plans that demonstrate that the proposed method of reclamation will achieve vegetation to satisfactorily comply with ARM 17.24.815~~, and 17.24.821 through 17.24.825, as applicable~~;

(f) through (3)(d) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, MCA

REASON: The proposed amendment to (1)(e) deletes references to rules addressing "alternate reclamation" which was replaced with "alternative postmining land use" by the 2003 Legislature in HB 373. Because the concept of alternate reclamation no longer exists, ARM 17.24.821, 17.24.823, and 17.24.825 no longer apply to prime farmland reclamation in that context. Proposed revisions to ARM 17.24.821 and 17.24.823 might still be applicable in unusual prime farmland situations if they were to involve reclamation to alternative postmining land uses. A reference to these rules, however, is not warranted because their applicability would become apparent in the Department's review of the application.

17.24.401 FILING OF APPLICATION AND NOTICE (1) and (2) remain the same.

(3) Upon receipt of notice of the department's determination of administrative completeness, the applicant shall place an advertisement in a newspaper of general circulation in the locality of the proposed activity at least once a week for four consecutive weeks. The advertisement must contain, at a minimum, the following information:

(a) through (e) remain the same.

(f) if an ~~alternate reclamation~~ alternative postmining land use plan is submitted, a brief description of the plan; and

(g) and (4) remain the same.

(5) Immediately upon issuance of a determination of administrative completeness, the department shall:

(a) issue written notification of:

(i) through (iii) remain the same.

(iv) the applicant's ~~alternate reclamation~~ alternative postmining land use plans, if any; and

(v) through (6) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, 82-4-226, 82-4-231~~(4)~~, 82-4-232, 82-4-233, MCA

REASON: The proposed amendments to (3)(f) and (5)(a)(iv) reflect the enactment of HB 373 by the 2003 Legislature replacing the concept of "alternate reclamation" with "alternative postmining land use."

17.24.404 REVIEW OF APPLICATION (1) through (8) remain the same.

~~(9) Before any final determination that 82-4-227(11), MCA, prohibits issuance of a permit or major revision, the applicant is entitled to a hearing pursuant to the case provisions of the Montana Administrative Procedure Act.~~

~~(10) The department may not approve an application if the mining and reclamation would be inconsistent with other such operations or proposed or anticipated operations in areas adjacent to the proposed permit area.~~

AUTH: 82-4-204, ~~82-4-205,~~ 82-4-206, MCA
IMP: 82-4-226, 82-4-231, MCA

REASON: The amendment proposes to delete (9) because an applicant’s right to appeal a permitting decision is provided by 82-4-231(9), MCA. That statute entitles any person with an interest that is or may be adversely affected by the Department's permit decision to a contested case hearing governed by the Montana Administrative Procedure Act and before the Board of Environmental Review.

The Board proposes to delete (10) because the Department applies the same standards to all applications and 82-4-231(11), MCA, requires an operation to be conducted so as to protect property adjacent to the permit area.

17.24.405 FINDINGS AND NOTICE OF DECISION (1) The department shall prepare written findings approving or denying an application filed pursuant to ARM 17.24.401(1) in whole or in part no later than 45 days from the date of the acceptability determination ~~or from date of publication of the final environmental impact statement, whichever occurs later~~ except as provided by 75-1-208(4)(b), MCA.

(2) Whenever the department has determined that it must prepare an environmental impact statement prior to a permit decision, the department shall complete the environmental impact statement ~~within 365 days of its notice given pursuant to ARM 17.24.401(2)~~ in accordance with 82-4-231, MCA.

(3) and (4) remain the same.

(5) Simultaneously with distribution of the written findings and notice of decision under (3) and (4) ~~of this rule~~, the department shall~~:~~

~~(a)~~ give a copy of its findings and notice of decision to each person or government official who filed a written objection or comment with respect to the application~~; and~~

~~(b) publish a summary of the decision in a local newspaper of general circulation in the general area of the proposed project~~.

(6) The department may not approve an application submitted pursuant to ARM 17.24.401(1) unless the application affirmatively demonstrates and the department's written findings confirm, on the basis of information set forth in the application or information otherwise available that is compiled by the department, that:

(a) through (i) remain the same.

(j) if an ~~alternate reclamation~~ alternative postmining land use is proposed, the requirements of ARM 17.24.821 and 17.24.823 have been met;

(k) through (m) remain the same.

~~(7) Before any final determination that 82-4-227(12), MCA, prohibits approval of the application, the applicant is entitled to a contested case hearing.~~

~~(8)(a)~~ (7)(a) If the department decides to approve the application, it shall:

(i) require the applicant to date, correct, or indicate that no change has occurred in the information submitted pursuant to ARM 17.24.303(1)(a) through ~~(8)~~ (h) and ~~(11)~~ (k) through ~~(13)~~ (m);

(ii) through (b) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ 82-4-206, MCA
IMP: 82-4-226, 82-4-231, MCA

REASON: The proposed amendments to (1) and (2) reflect changes to 82-4-231(8), MCA, enacted by the 2001 Legislature setting forth the statutory time extension provided in 75-1-208(4)(b), MCA, and requiring a final environmental impact statement to be completed and published at least 15 days prior to the issuance of written findings rather than requiring the

environmental impact statement to be completed within 365 days of the date of notice.

Section 75-1-208(4)(b), MCA, provides that the time during which an informal appeal of a Department MEPA decision is being reviewed by the Environmental Quality Council is not counted in computing the deadline imposed by 82-4-231, MCA, for rendering permit decisions.

The proposed amendments to (5) and (5)(a) are necessary because of the deletion of (5)(b).

The deletion of (5)(b) is proposed because all parties that commented on the permit application are notified of the decision pursuant to (5)(a).

The proposed amendment to (6)(j) substitutes "alternative postmining land use" for "alternate reclamation" to reflect the change in terminology used by the 2003 Legislature in HB 373. The proposed amendment also changes rule references in accordance with the proposed amendments to ARM 17.24.821 through 17.24.824.

The proposed deletion of (7) is necessary because an applicant's right to appeal a permitting decision is provided by 82-4-231(9), MCA.

Section (8)(a)(i) is being amended to correct an internal reference cite because of amendments being made to the rule cross-referenced.

17.24.412 EXTENSION OF TIME TO COMMENCE MINING

(1) remains the same.

(2) A request pursuant to 82-4-221(1), MCA, for extension of time to commence mining is subject to the public notice and participation requirements of ARM 17.24.401 through 17.24.403.

~~(3) Whenever, after issuance of a permit, the permittee applies for an extension of time to commence mining, the permittee shall publish at least once a week for 2 consecutive weeks in a local newspaper of general circulation in the locality of the permit area, a notice of the application.~~ The notice must include the items required in ARM 17.24.401(3) and the following:

(a) and (b) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-221, MCA

REASON: The proposed amendment to (2) clarifies that both the notice and participation requirements of ARM 17.24.401 to 17.24.403 apply to a request for extension of time to commence mining. ARM 17.24.402 contains no notice requirements but requires an opportunity to submit comments. ARM 17.24.402 contains both notice and participation requirements. The proposed amendment also deletes notice requirements in (3) that are not consistent with the applicable notice requirements set forth in ARM 17.24.401(3).

17.24.413 CONDITIONS OF PERMIT (1) The following conditions accompany the issuance of each permit:

(1) through (3) remain the same, but are renumbered (a) through (c).

~~(4)~~ (d) Within 30 days after a cessation order is issued under 30 CFR 843.11 or 82-4-251, MCA, for operations conducted under the permit, except where a stay of the cessation order has been granted and remains in effect, the permittee shall either submit to the department the following information, current to the date the cessation order was issued, or notify the department in writing that there has been no change since the immediately preceding submittal of such information:

~~(a)~~ (i) any new information needed to correct or update the information previously submitted to the department by the permittee under ARM 17.24.303(1)(a) through ~~(8)~~ (h); or

~~(b)~~ (ii) if not previously submitted, the information required from a permit applicant by ARM 17.24.303(1)(a) through ~~(8)~~ (h).

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

(f) A permittee shall immediately notify the department whenever a creditor of the permittee has attached or obtained a judgment against the permittee's equipment or materials in the permit area or on the collateral pledged to the department.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-227, 82-4-231, MCA

REASON: Sections (4)(a) and (b) (renumbered (d)(i) and (ii)) are being amended to correct internal reference cites because of amendments being made to the rule cross-referenced.

Proposed new (f) provides the Department with information that is relevant to an operator's ability to perform reclamation. Attachment of equipment or materials may indicate pending insolvency of the operator and, thus, its financial inability to perform reclamation. Attachment of equipment or materials may also serve as a precursor to the removal of equipment necessary to perform reclamation in contravention of ARM 17.24.501.

17.24.416 PERMIT RENEWAL (1) Applications for renewals of a permit must be made at least 240, but not more than 300 days prior to the expiration date. Renewal applications must be on a form provided by the department, including, at a minimum, the following:

(a) remains the same.

(b) a ~~copy of the~~ proposed newspaper notice and proof of publication of ~~same under~~ a department-approved newspaper notice pursuant to (2) ~~of this rule~~;

(c) through (5) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-221, 82-4-226, MCA

REASON: The amendment to (1)(b) requires Department approval of the newspaper notice prior to its publication to assure accuracy. The applicant will then be required to

supplement the application by submitting proof of publication of the approved notice to the Department.

17.24.427 CHANGE OF CONTRACTOR (1) The ~~operator~~ permittee shall notify the department of ~~any~~ a proposed new contractor or any proposed change in ~~any~~ contractor responsible for day-to-day operations at a permit area ~~within 30 days of the time the obligation is created~~. When such a change ~~has occurred~~ is proposed without transfer of ~~a~~ the permit ~~or while a permit transfer is pending~~ pursuant to ARM 17.24.418, the permittee shall submit the following to the department:

(a) information required under ARM 17.24.303 for the ~~third party~~ contractor;

(b) remains the same.

(c) a statement identifying a designated agent of the contractor.

(2) ~~If the department determines the third party has outstanding violations or unpaid penalties, the department shall suspend the permit until these problems are resolved.~~ The contractor may not conduct any activities on the permit area unless and until the department determines that the information submitted under (1) is acceptable and satisfies the requirements of ARM 17.24.303.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, 82-4-227, 82-4-238, 82-4-251, MCA

REASON: The proposed amendments to this rule assure that the Department has information required under ARM 17.24.303(5) for a person that will engage in strip or underground mining on behalf of the permittee. The proposed amendments further assure that the Department has determined that the person is qualified to conduct operations on behalf of the permittee before the person engages in strip or underground mining on behalf of the permittee. Under 82-4-227(11), MCA, and ARM 17.24.101(79), a contractor who has current violations of state or federal environmental or reclamation laws may be disqualified from being a contractor at a coal mine.

17.24.501 GENERAL BACKFILLING AND GRADING REQUIREMENTS

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

(4) All final grading on the area of land affected must be to the approximate original contour of the land in accordance with 82-4-232(1), MCA. ~~Final slopes must be graded to prevent slope failure, may not exceed the angle of repose, and must achieve a minimum long-term static safety factor of 1.3.~~

(a) The operator shall transport, backfill, compact ~~(where advisable~~ to ensure ~~stability or to prevent leaching of toxic materials pursuant to~~ compliance with ARM 17.24.501(3)~~,~~ ~~and~~ 17.24.505~~, and (3)(b)~~), and grade all spoil material as necessary to achieve the approximate original contour. Highwalls must be reduced or backfilled in compliance with ARM 17.24.515(1), ~~as appropriate~~ or approved highwall reduction alternatives in compliance with ARM 17.24.515(2). ~~Box-cut~~

~~spoils or portions thereof must be hauled to the final cut if:~~

~~(i) excessive large areas of the mine perimeter would be disturbed by proposed methods for highwall reduction or by regrading of box-cut spoils; or~~

~~(ii) material shortages in the area of the final highwall or spoil excesses in the area of the box-cut area are likely to preclude effective recontouring.~~

(b) and (c) remain the same.

(d) Depressions must be eliminated, except as provided in ARM 17.24.503(1).

(5) remains the same.

(6) Backfilling and grading must be kept current with mining operations. To be considered current, backfilling and grading must meet the following requirements, unless otherwise approved by the department upon adequate written justification and documentation provided by the operator:

(a) through (c) remain the same.

(d) All backfilling and grading must ~~approximate~~ achieve the approved postmining topography. ~~This does not relieve the operator from any final grading necessary to achieve the approved postmining topography.~~

(7) The operator shall notify the department, in writing, upon detection of grading problems that would result in topography not consistent with the approved postmine topography.

AUTH: 82-4-204, ~~82-4-205,~~ 82-4-231, MCA
IMP: 82-4-231, 82-4-232, MCA

REASON: The proposed amendment to (4) inserts a citation to 82-4-232(1), MCA, and deletes standards for grading final slopes. The 2003 Legislature in HB 373 codified these standards in 82-4-232(1), MCA.

The proposed amendment to (4)(a) deletes excess verbage to aid its readability and adds a citation to (3)(b) as an additional provision addressing compaction. The proposed amendment to (4)(a) also deletes criteria to determine whether box-cut spoils must be hauled to the final cut because the 2003 Legislature enacted HB 373 setting forth statutory criteria in 82-4-232(1)(b), MCA.

The proposed amendment to (4)(d) maintains consistency with federal regulations. Pursuant to 30 CFR 816.102(a)(2), a disturbed area must be backfilled and regraded to eliminate all depressions with the exception of small depressions meeting specified criteria. The requirement to eliminate depressions had been included in the definition of "approximate original contour" set forth in ARM 17.24.301(13). It is not included, however, in the proposed amendment to ARM 17.24.301(13) that incorporates the definition of "approximate original contour" in HB 373 enacted by the 2003 Legislature.

The proposed amendment to (6)(d) clarifies the standards that must be met for backfilling and grading.

The proposed addition of (7) relocates the requirement that an operator notify the Department of grading problems from ARM 17.24.313(3)(e). That requirement is more appropriately

included in this subchapter addressing backfilling and grading requirements.

17.24.515 HIGHWALL REDUCTION (1) Highwalls must be eliminated and the ~~steepest slope of the~~ reduced highwall slope must be ~~at the most moderate slope possible, but in~~ no ~~case~~ greater than ~~20°~~ ~~from the horizontal or at~~ whatever slope is necessary to achieve a minimum long-term static safety factor of 1.3. The department may specify a lesser slope whenever necessary to achieve postmining slope stability. Highwall reduction must be commenced at or beyond the top of the highwall and sloped to the graded spoil bank.

(2) Highwall reduction alternatives may be permitted only to replace bluff features that existed before mining and where the department determines that:

(a) ~~they~~ postmining bluffs are compatible with the proposed postmining land use;

(b) ~~they~~ postmining bluffs are stable, achieving a minimum long-term static safety factor of 1.3; ~~and~~

~~(c) they are in compliance with the applicable portions of ARM 17.24.313, 17.24.821, 17.24.823, and 17.24.824.~~

(c) similar geometry and function exists between pre- and postmining bluffs;

(d) the horizontal linear extent of postmining bluffs does not exceed that of the premining condition; and

(e) highwalls will be backfilled to the extent that the uppermost mineable coal seam is buried in accordance with ARM 17.24.505(1).

AUTH: 82-4-204, 82-4-231, MCA
IMP: 82-4-232, MCA

REASON: The proposed amendment to (1) reflects the enactment of HB 373 by the 2003 Legislature replacing the requirement that highwalls be reduced to no greater than 20° from the horizontal with the requirement that highwalls be reduced to whatever slope is necessary to achieve a minimum long-term static safety factor of 1.3. See 82-4-232(1), MCA.

The proposed amendment to (2)(a) through (d) is in response to comments from the Office of Surface Mining in letters of May 14, 1990 and July 20, 1998, stating that, in order to meet the approximate original contour required by Section 515(b)(3) of the Surface Mining Control and Reclamation Act, ARM 17.4.515 must be clarified to provide that alternatives to highwall reduction are only allowed to replace bluff features that existed prior to mining and not differ significantly from premining bluff characteristics. The proposed amendment to (2)(e) repeats the requirement that exposed coal seams must be buried in the reclamation of a highwall so that this requirement appears in both the rule dealing with burial and treatment of exposed minerals and the rule dealing with the reclamation of highwalls.

The proposed deletion of (2)(c) is necessary to delete references to rules that have been eliminated or are no longer

relevant due to modifications.

17.24.520 THICK OVERBURDEN AND DISPOSAL OF EXCESS SPOIL

(1) and (2) remain the same.

(3) Spoil not required to achieve the approximate original contour may be transported to and placed in a controlled (engineered) manner in a disposal area other than the mine workings or excavations. All of the following conditions, in addition to the other requirements of the Act and this subchapter, must be met:

(a) and (b) remain the same.

(c) The fill must be designed using recognized professional standards, certified by a ~~registered~~ licensed professional engineer, experienced in the design of earth and rock fills, to ensure stability and meet other applicable requirements of this subchapter, and approved by the department.

(d) through (h) remain the same.

(i) The spoil must be transported and placed in a controlled manner, in horizontal lifts not exceeding ~~4~~ four feet in thickness, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a long-term static safety factor of 1.5. Horizontal lifts exceeding ~~4~~ four feet in thickness may be allowed if the design ensures stability, is certified by a ~~registered~~ licensed professional engineer, and is approved by the department. The final configuration of the fill must be suitable for postmining land uses except that no depressions or impoundments may be allowed on the completed fill. Terraces must not be constructed unless approved by the department to prevent erosion and ensure stability.

(j) The fill must be inspected for stability at least quarterly by the ~~registered~~ licensed engineer or other qualified professional specialist under the direction of a ~~registered~~ licensed engineer. The engineer or specialist must be experienced in the construction of similar earth and water structures. The above-described inspections must be made during critical construction periods to assure removal of all organic material and soil, placement of underdrainage and surface drainage systems, and proper placement and compaction of fill materials, and revegetation. The permittee shall provide a report by the ~~registered~~ licensed engineer or other qualified professional specialist within ~~2~~ two weeks after each inspection. The report must certify that the fill has been constructed as specified in the design approved by the department. A copy of the report must be retained at the mine site.

(i) through (i)(D) remain the same.

(ii) The qualified ~~registered~~ licensed professional engineer shall promptly provide to the department a certified report discussing whether the fill has been constructed and maintained as designed and in accordance with the approved plan and this subchapter. The report must address indications of instability, structural weakness, and other hazardous

conditions.

(iii)(A) through (C) remain the same.

(iv) The department may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, whenever the following additional conditions are met:

(A) the excess spoil must consist of at least 80% nontoxic-forming rock that does not slake in water and will not degrade to unconsolidated soil-like material. Whenever used, noncemented clay shale, clay spoil, unconsolidated or other nondurable excess spoil materials must be mixed with excess durable rock spoil in a controlled manner so that no more than 20% of the fill volume, as determined by tests performed by a ~~registered~~ licensed engineer and approved by the department, is not durable rock;

(B) and (C) remain the same.

(k) Coal mine wastes and coal processing wastes may not be disposed of in excess spoil fills and may be disposed of in the mine excavations only upon the prior approval of the department. See ARM 17.24.505~~,~~ and 17.24.510 ~~and 17.24.520(13)~~.

(l) remains the same.

(m) Excess spoil, coal mine wastes and coal processing wastes may be returned to underground mine workings, but only in accordance with a disposal program approved by the department and the mine safety and health administration upon the basis of a plan submitted under ARM 17.24.901(1)(b), 17.24.920, 17.24.924(1), 17.24.930, and 17.24.932(1).

(n) and (o) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-231, MCA

REASON: The proposed amendments to (3)(c), (i), and (j) change the phrase "registered engineer" to "licensed engineer" to conform with Montana Board of Professional Engineers and Land Surveyors terminology.

The proposed amendment to (3)(k) deletes reference to a rule that does not exist.

The proposed amendment to (3)(m) cites, for completeness, additional rules that address the disposal of underground waste.

17.24.522 PERMANENT CESSATION OF OPERATIONS (1) and (2) remain the same.

~~(3) All backfilling and grading must be completed within 90 days after the department has determined that the operation is completed. Final pit reclamation must proceed as close behind the coal loading operation as the frequency and location of ramp roads, the use of overburden stripping equipment in highwall reclamation, and other factors allow. Equipment needed for reclamation may not be removed from the mine until reclamation is complete.~~

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-231, 82-4-232, MCA

REASON: The proposed deletion of (3) is necessary to delete the requirement that backfilling and grading must be completed within 90 days after permanent cessation of operations. This provision is inconsistent with ARM 17.24.501(6)(b), (requiring backfilling and grading to be completed within two years after coal removal) and is unrealistic for large coal mining operations.

The proposed deletion of (3) also deletes the provisions requiring concurrent reclamation and maintenance of essential equipment on the site for reclamation because they are redundant to ARM 17.24.501(6) and (1), respectively.

17.24.523 COAL FIRES AND COAL CONSERVATION (1) remains the same.

(2) Strip or underground mining operation must be conducted to prevent failure to conserve coal, utilizing the best technology currently available to maintain appropriate environmental protection. The operator shall adhere to the approved coal conservation plan required in ARM 17.24.322.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-232, MCA

REASON: The proposed amendment adds a provision addressing coal conservation that formerly was contained in ARM 17.24.763. Subchapter 7 primarily addresses the removal and replacement of topsoil and reestablishment of vegetation. The coal conservation provision is more appropriately included along with the loosely related provision regarding coal fires set forth in ARM 17.24.523.

17.24.601 GENERAL REQUIREMENTS FOR ROAD AND RAILROAD LOOP CONSTRUCTION (1) through (7) remain the same.

(8) Following construction or reconstruction of each haul road, access road, and railroad loop, the operator shall submit to the department a report, prepared by a qualified ~~registered~~ licensed professional engineer experienced in the design and construction of roads or railroad loops, as applicable, stating that the road or railroad loop was constructed or reconstructed in accordance with the plan approved pursuant to ARM 17.24.321.

(9) through (11) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-231, 82-4-232, MCA

REASON: The proposed amendment to (8) changes the phrase "registered professional engineer" to "licensed professional engineer" to conform with Montana Board of Professional Engineers and Land Surveyors terminology.

17.24.602 LOCATION OF ROADS AND RAILROAD LOOPS (1) The location of a proposed road or railroad loop must be identified on the site by visible markings ~~at the time the mining and reclamation plan is preinspected and~~ prior to the commencement

of construction. Construction must not proceed along dry coulees, or intermittent or perennial drainageways unless the operator demonstrates that no off-site sedimentation will result and all the requirements of this subchapter are met, or in wet, boggy, steep, or unstable areas.

(2) remains the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-231, 82-4-232, MCA

REASON: The proposed amendment to (1) requires the location of a road or railroad loop to be marked prior to construction rather than prior to the preinspection because the siting of a road or railroad loop may be altered after the preinspection during the application review process.

17.24.603 ROAD AND RAILROAD LOOP EMBANKMENTS (1) through (3) remain the same.

(4) Road and railroad loop embankments must have a minimum ~~seismic safety factor of 1.2 and a minimum~~ static safety factor of ~~1.5~~ 1.3 under any condition of loading likely to occur, or such higher factor as the department determines to be reasonably necessary for safety or protection of property.

(5) remains the same.

AUTH: 82-4-204, MCA
IMP: 82-4-231, 82-4-232, MCA

REASON: The proposed amendment to (4) deletes the seismic safety factor requirement because the minimum static safety factor is sufficient to ensure safety for roads and railroad embankments. The proposed amendment also lowers the minimum static safety factor from 1.5 to 1.3; 1.3 is sufficient for normal operations and the rule allows the Department to increase the safety factor, if necessary, for safety or protection of property.

17.24.605 HYDROLOGIC IMPACT OF ROADS AND RAILROAD LOOPS

(1) and (2) remain the same.

(3) Railroad loops and all roads except ramp roads must be adequately drained using structures such as, but not limited to, ditches, water barriers, cross-drains, ditch-relief drainages, culverts, and bridges.

(a) through (d) remain the same, but are renumbered (4) through (7).

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

~~(e)~~ (8) Drainage structures are required for stream channel crossings. Drainage structures must not affect the normal flow or gradient of the stream or adversely affect fish migration and aquatic habitat or related environmental values. Riprap may be used where an ephemeral channel is too shallow for placement of a culvert.

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

AUTH: 82-4-204, MCA
IMP: 82-4-231, 82-4-232, MCA

REASON: The proposed amendment to (3)(e) is necessary to accommodate situations in which placement of a culvert is impractical due to the limited height of the road above the channel. Under these circumstances, placement of a culvert would require the road to be built up to a minimum height above the top of the culvert. In areas where the landscape is relatively flat, runoff would simply run around the built-up road crossing, defeating the purpose for placement of the culvert. The placement of riprap on the road would protect the road and channel from scouring and erosion, essentially performing the same function as a culvert.

17.24.609 OTHER SUPPORT FACILITIES (1) Support facilities, including temporary and mobile facilities, required for, or used incidentally to, the operation of the mine, including, but not limited to, mine buildings, rock crushers, coal loading facilities, coal storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, septic systems, sewage lagoons, fuel storage and distribution facilities, sheds, shops, ~~and~~ other buildings, and environmental monitoring sites must be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities must be designed, constructed or reconstructed, maintained, and used in a manner which prevents, to the extent possible using the BTCA:

(a) through (3) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-231, 82-4-232, MCA

REASON: The proposed amendment to (1) ensures that proper consideration is given to the location, construction and maintenance of septic systems, sewage lagoons, fuel storage and distribution facilities, and environmental monitoring sites. Septic systems, sewage lagoons and fuel storage and distribution facilities may cause environmental problems through leakage and environmental monitoring sites may be located in the bottom of a drainage channel or other environmentally sensitive area.

17.24.623 BLASTING SCHEDULE (1)~~(a)~~ The operator shall publish a blasting schedule at least 10 days, but not more than 20 days, before beginning a blasting program in which blasts that use more than ~~5~~ five pounds of explosive or blasting agent are detonated. The blasting schedule must be published once in a newspaper of general circulation in the locality of the blasting site.

~~(b)~~ (2) Copies of the schedule must be distributed by mail to local governments and public utilities and by mail or delivered to each residence within ~~1~~ 1/2 mile of the permit area

described in the schedule. For the purposes of this section, the permit area does not include haul or access roads, coal preparation and loading facilities, and transportation facilities between coal excavation areas and coal preparation or loading facilities, if blasting is not conducted in these areas. Copies sent to residences must be accompanied by information advising the owner or resident how to request a preblasting survey.

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

~~(2)(a)~~ (4) A blasting schedule must not be so general as to cover the entire permit area or all working hours, but it must identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur.

~~(b)~~ (5) The blasting schedule must contain at a minimum:

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

~~(ii)~~ (b) identification of the township, range and section for specific areas in which blasting will take place~~. Each specific blasting area described must be reasonably compact and not larger than 300 acres~~;

(iii) through (v) remain the same, but are renumbered (c) through (e).

~~(vi)~~ (f) a description of unavoidable hazardous situations referred to in ARM 17.24.310~~(6)~~(1)(f) that have been approved by the department for blasting at times other than those described in the schedule.

~~(3)(a)~~ (6) Before blasting in areas or at times not in a previous schedule, the operator shall prepare a revised blasting schedule according to the procedures of (1) ~~of this rule~~. Whenever a schedule has previously been provided to the owner or residents under ~~ARM 17.24.623~~(1) with information on requesting a preblasting survey, the notice of change need not include information regarding preblast surveys.

~~(b)~~ (7) If there is a substantial pattern of non-adherence to the published blasting schedule as evidenced by the absence of blasting during scheduled periods, the department may require the operator to prepare a revised blasting schedule according to the procedures in ~~(a) above~~ (6).

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-231, MCA

REASON: The proposed amendment to (1)(b) (renumbered (2)) requires an operator to deliver annual blasting schedules to residences within 1/2 mile rather than one mile. Blasting does not normally impact areas more than 1/2 mile away and, therefore, delivery of blasting schedules to residences beyond 1/2 mile is unwarranted.

The proposed amendment to (2)(b)(ii) (renumbered (5)(b)) simplifies the identification of the blast location. Identification of the blast area by township, range and section rather than a legal description of an area up to 300 acres will aid the public in locating the blast area while still identifying all areas where blasting will take place.

The proposed amendment to (2)(b)(vi) (renumbered (5)(f))

corrects an error in rule citation.

The proposed amendment to (3)(a) (renumbered (6)) is for consistency in citation. The proposed amendment to (3)(b) (renumbered (7)) amends the internal cite consistent with the renumbering in these rules.

17.24.624 SURFACE BLASTING REQUIREMENTS (1) through (3) remain the same.

(4) Warning and all-clear signals of different character that are audible ~~at all points~~ within a range of 1/2 mile from the point of the blast must be given. Each person within the permit area and each person who resides or regularly works within 1/2 mile of the permit area must be notified of the meaning of the signals through appropriate instructions. These instructions must be periodically delivered or otherwise communicated in a manner that can be reasonably expected to inform such persons of the meaning of the signals. The operator shall maintain signs in accordance with ARM 17.24.524.

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

(6)(a) Airblast must be controlled so that it does not exceed the values specified below at any dwelling, or public~~, building, school, church, or~~ commercial, ~~public,~~ community or institutional ~~structure~~ building, unless the structure is owned by the operator and is not leased to any other person. If a building owned by the operator is leased to another person, the lessee may sign a waiver relieving the operator from meeting the airblast limitations of this section.

Lower Frequency limit of measuring system, Hertz (Hz) (+3dB)	Maximum level in decibels (dB)
0.1 Hz or lower - flat response	134 peak.
2 Hz or lower - flat response	133 peak.
6 Hz or lower - flat response	129 peak.
C-weighted, slow response	105 peak dBC.

If necessary to prevent damage, the department shall specify lower maximum allowable airblast levels than those above.

(b) through (d) remain the same.

(7) Except where lesser distances are approved by the department, based upon a preblasting survey, seismic investigation, or other appropriate investigation, blasting must not be conducted within:

(a) 1,000 feet of any dwelling or public, ~~private~~ commercial, community or institutional building~~, including any dwelling, school, church, hospital, or nursing facility~~; ~~and~~

(b) through (10) remain the same.

(11) In all blasting operations, except as otherwise authorized in this section, the maximum peak particle velocity must not exceed the following limits at the location of any dwelling, or public~~, building, school, church, or~~ commercial, ~~public,~~ community or institutional ~~structure~~ building:

Distance (D) from the blasting site, in feet	Maximum allowable peak particle velocity (V max) for ground vibration, in inches/second	Scaled-distance factor to be applied without seismic monitoring (Ds)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

(a) through (13) remain the same.

(14) The maximum weight of explosives to be detonated within any ~~8~~ eight-millisecond period may be determined by the formula $W = (D/Ds)^2$ where W = the maximum weight of explosives, in pounds, that can be detonated in any ~~8~~ eight-millisecond period; D = the distance, in feet, from the nearest blast hole to the nearest public building or structure, dwelling, school, church, or commercial or institutional building or structures, except as noted in (12) ~~of this rule~~; and Ds = the scaled distance factor, using the values identified in (11) ~~of this rule~~.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-231, MCA

REASON: The proposed amendment to (4) deletes the requirement that a blast be audible "at all points" within 1/2 mile. An operator cannot realistically ensure that a signal is audible at every location within 1/2 mile from the blast given varied topography and other environmental conditions.

The proposed amendments to (6)(a), (7)(a) and (11) simplify and provide consistency to the description of structures that are subject to blasting restrictions. See 30 CFR 816.67(d)(3) and 817.67(d)(3).

The proposed amendment to (14) is necessary to bring the rule into line with the existing federal regulations. Most coal mines have been measuring and reporting blasts from the nearest blast hole, but some confusion occasionally surfaces because of the difference between Montana's rules and the federal regulations. The addition of this language will help reduce that confusion.

17.24.626 RECORDS OF BLASTING OPERATIONS (1) A record of each blast, including seismograph records, must be retained for at least ~~3~~ three years and must be available for inspection by the department and the public on request. Blasting records must be complete and accurate at the time of inspection. The record must contain the following data:

(1) through (3) remain the same, but are renumbered (a) through (c).

~~(4)~~ (d) direction and distance, in feet, from the nearest blast hole to the nearest dwelling, school, church, or

commercial, public, or institutional building or structure either:

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

(5) through (9) remain the same, but are renumbered (e) through (i).

~~(10)~~ (j) total weight of explosives used and total weight of explosives used in each hole;

(11) through (19) remain the same, but are renumbered (k) through (s).

(a) through (d) remain the same, but are renumbered (i) through (iv).

(20) remains the same, but is renumbered (t).

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-231, MCA

REASON: The proposed amendment to (10) (renumbered (j)) makes state blasting record provisions at least as stringent as federal regulations under the Surface Mining Control and Reclamation Act of 1977. See 30 CFR 816.68(d) and 817.68(d). Unlike federal regulations, current state rules do not require submittal of the total weight of explosives used in each hole.

17.24.633 WATER QUALITY PERFORMANCE STANDARDS (1) remains the same.

(2) Sediment control through BTCA practices must be maintained until the disturbed area has been restored, the revegetation requirements of ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, ~~17.24.728, and 17.24.730 through 17.24.733~~ and 17.24.731~~,~~ have been met, the area meets state and federal requirements for the receiving stream, and evidence is provided that demonstrates that the drainage basin has been stabilized ~~to the extent that it was prior to mining, assuming proper management~~ consistent with the approved postmining land use.

(3) through (5)(b) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-231, MCA

REASON: The proposed amendment to (2) simplifies the reference to the applicable rules regarding revegetation and reflects changes in those rules. The proposed amendment also modifies the evaluation of drainage basin stability to reflect enactment of HB 373 by the 2003 Legislature. Under HB 373, there is a greater opportunity for having a postmining land use that is different from the premining land use and, thus, drainage basin stability must be evaluated in that context.

17.24.634 RECLAMATION OF DRAINAGE~~S~~ BASINS

(1) ~~Construction of reclaimed~~ Reclaimed drainage~~s must exhibit channel and floodplain dimensions that approximate the premining configuration and that will blend with the undisturbed drainage system above and below the area to be reclaimed. The~~

~~average channel gradient must be maintained with a concave longitudinal profile and the~~ basins, including valleys, channels, and floodplains must be constructed to:

(a) comply with the postmining topography map required by ARM 17.24.313(1)(d)(iv) and approved by the department;

(b) approximate original contour;

~~(a)~~ (c) ~~approximate~~ an appropriate geomorphic habit or characteristic pattern consistent with 82-4-231(10)(k), MCA;

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

~~(c) improve upon unstable conditions which existed in the drainage system prior to mining where practicable in consultation with and upon approval by the department;~~

~~(d)~~ (e) provide separation of flow between adjacent drainages and safely pass the runoff from a ~~24~~ six-hour precipitation event with a 100-year recurrence interval, or larger event as specified by the department~~, including emergency spillways of permanent impoundments~~;

~~(e)~~ (f) provide for the long-term relative stability of the landscape. The term "relative" refers to a condition comparable to an unmined landscape with similar climate, topography, vegetation and land use;

(g) provide an average channel gradient that exhibits a concave longitudinal profile;

~~(f)~~ (h) establish or restore ~~the channel to include, where appropriate,~~ a diversity of ~~aquatic~~ habitats ~~(generally a series of riffles and pools)~~ that ~~approximates the premining characteristics~~ achieve the approved postmining land use~~;~~, and

~~(g)~~ restore, enhance where practicable, or maintain natural riparian vegetation ~~in order~~ as necessary to comply with ARM ~~17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.721, 17.24.723 through 17.24.726, 17.24.728, and 17.24.730 through 17.24.733~~ subchapter 7~~.~~; and

(i) exhibit dimensions and characteristics that will blend with the undisturbed drainage system above and below the area to be reclaimed and that will accommodate the approved revegetation and postmining land use requirements.

~~(2) Prior to reclamation of a drainage channel depicted on the postmining topographic map, the operator shall, unless the department in writing exempts all or portions of the drainage channel from this requirement, submit to the department designs for the drainage channel or any modifications from the approved design based on sound geomorphic and engineering principles. These designs must meet the criteria in (1) above and any other applicable performance standards in the rules. These designs must be approved by the department before construction begins.~~

~~(3) Alternate channel reclamation techniques may be proposed in place of (1)(c) of this rule and the channel gradient and longitudinal profile requirements of (1) of this rule, and may be utilized if approved. The department may not approve alternate techniques unless they are as environmentally protective as the techniques they replace. No alternative to (1)(a), (b), (d), (e), (f), or (g) of this rule may be proposed or accepted.~~

~~(4)~~ (2) Any permanent structure placed or constructed

within a perennial or intermittent stream must be certified by a qualified ~~registered~~ licensed professional engineer as meeting the performance standards and any design criteria specified by the department.

AUTH: 82-4-204, MCA
IMP: 82-4-231, MCA

REASON: The proposed amendments reorganize ARM 17.24.634 so that all of the substantive requirements for reclaiming drainage basins, including valleys, channels and floodplains, are listed after the introductory provision of (1). The requirement that reclaimed drainages exhibit channel and floodplain dimensions that approximate the premining configuration currently in (1) is incorporated in the proposed addition of (1)(b) requiring reclamation of these features to the approximate original contour. The requirement that reclaimed drainages blend with undisturbed drainage systems above and below the area to be reclaimed currently in (1) is incorporated in the proposed addition of (1)(i). Finally, the requirement that the average channel gradient be maintained with a concave longitudinal profile currently in (1) is incorporated in proposed new (1)(g).

The proposed addition of (1)(a) is necessary to assure that a drainage basin is reclaimed in conformity with the postmining topography map that has been reviewed and approved by the Department.

The proposed amendment to existing (1)(a) (renumbered (1)(c)) incorporates relevant statutory considerations codified in 82-4-231(10)(k), MCA, by the 2003 Legislature in enacting HB 373.

The proposed deletion of existing (1)(c) is necessary because stability is addressed in proposed new (1)(f).

The proposed amendment to existing (1)(d) (renumbered (e)) requires a drainage to safely pass the runoff from a 100-year, six-hour storm. This change requires a reclaimed drainage to safely pass a generally smaller peakflow than the existing rule requiring the safe passage of a 100-year, 24-hour storm. A 100-year, six-hour event, however, still represents a large and rare runoff event and would make the rule more consistent with similar federal regulations relating to permanent diversions, siltation structures and impoundments. (See 30 CFR 816.43(b) and 46(c)(2), and 849(a)(9)(ii)). The amendment would also make the rule consistent with ARM 17.24.639(26) addressing runoff from areas above coal waste structures. The current 100-year, 24-hour design requirement represents a somewhat stricter "safety" requirement than needed, and has resulted in some problems in the field and in inconsistencies between coal program engineering and geomorphic design requirements.

The proposed amendment to existing (1)(e) (renumbered (f)) refines the stability criteria for reclaiming drainages. The required stability of a reclaimed drainage basin is a function of its approved postmining land use, established revegetation, topography, and climate. For example, a drainage basin

reclaimed to cropland may be more susceptible to erosion because it does not have permanent revegetation but may be less prone to erosion because it is relatively flat as compared to drainage basins reclaimed for other postmining land uses. The amendment acknowledges that success in terms of stability cannot be measured using a one-size-fits-all standard. Rather, it must be made on a case-by-case basis comparing the reclaimed land to unmined landscapes with comparable conditions.

The proposed amendments to existing (1)(f) and (g) remove extraneous language and combine the requirements in proposed (1)(h).

The proposed deletion of (2) is necessary because designs for the drainage channels of intermittent streams and perennial streams are to be included in the drainage basin reclamation plan required under ARM 17.24.313(1)(e).

The proposed deletion of (3) is necessary because it is an unnecessary provision. Permittees have never applied for approval of alternate techniques during the 24 years that it has been in effect.

The proposed amendment to existing (4) changes the phrase "registered professional engineer" to "licensed professional engineer" to conform to Montana Board of Professional Engineers and Land Surveyors terminology.

17.24.635 GENERAL REQUIREMENTS FOR TEMPORARY AND PERMANENT DIVERSION OF OVERLAND FLOW, THROUGH FLOW, SHALLOW GROUND WATER FLOW, AND EPHEMERAL, INTERMITTENT, AND PERENNIAL STREAMS

(1) through (4)(b) remain the same.

(5) The design and construction of all stream channel diversions and any related structures must be certified by a qualified~~, registered,~~ licensed professional engineer as meeting the performance standards and any design criteria set by the department.

~~(6) Excess excavated material not necessary for diversion channel geometry or regrading of the channel must be disposed of in accordance with subchapter 5.~~

~~(7) Soil must be handled in compliance with ARM 17.24.701 through 17.24.703.~~

AUTH: 82-4-204, MCA
IMP: 82-4-231, MCA

REASON: The proposed amendment to (5) changes the phrase "registered professional engineer" to "licensed professional engineer" to conform to Montana Board of Professional Engineers and Land Surveyors terminology.

Sections (6) and (7) are proposed for deletion because they are provisions that unnecessarily refer to performance standards set forth in subchapters 5 and 7.

17.24.636 SPECIAL REQUIREMENTS FOR TEMPORARY DIVERSIONS

~~(1) For overland flow, through flow, shallow ground water flow, and flow from drainage basins of less than 1 square mile, diversion design must incorporate the following:~~

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

~~(b)~~ (2) If ~~Channel~~ channel lining ~~must~~ is required to prevent erosion, the channel lining must be designed using standard engineering practices to safely pass design velocities. ~~Riprap must be maintained as needed following individual storm events.~~

~~(c)~~ (3) Freeboard must be as specified by the department, but no less than ~~0.3 feet~~ 1.0 foot. ~~Protection must be provided for areas of transition in non-uniform flow and for critical areas such as curves and swales.~~

~~(d) If the department determines that the area protected is a critical area, it may require that the design freeboard be increased.~~

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

~~(2)(a) Ephemeral or intermittent streams with drainage areas larger than 1 square mile and perennial stream flow from within the permit area may be diverted, if the diversions are approved by the department in accordance with ARM 17.24.635 and 17.24.651 and if the diversions comply with other state and federal statutes and rules.~~

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

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

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

AUTH: 82-4-204, MCA
IMP: 82-4-231, MCA

REASON: Sections (1) and (2)(a) are proposed for deletion because the delineation of drainage basins of less than or greater than one square mile for the purpose of diversion ditch design is arbitrary and has little practical value.

The proposed amendment to (1)(b) provides regulatory flexibility, accommodating situations in which a designed channel lining is not necessary. The proposed amendment also deletes a provision addressing riprap that is redundant to ARM 17.24.635(4)(a).

The proposed amendment to (1)(c) requires a temporary diversion to have a freeboard of more than one foot rather than more than .3 feet. Freeboard of .3 feet is impracticable to observe in the field and a freeboard of one foot offers more protection. The new freeboard standard for temporary diversions conforms to that for spillways specified in ARM 17.24.639(7)(a). The proposed amendment deletes the last sentence in (1)(c) which is redundant to ARM 17.24.635(3) and (4)(a).

The proposed deletion of (1)(d) is necessary because it is redundant to ARM 17.24.636(2).

17.24.638 SEDIMENT CONTROL MEASURES (1) through (1)(c) remain the same.

(2) Sediment control measures include practices carried out within or adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed area must reflect the degree to which successful

mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(a) disturbing the smallest practicable area at any ~~1~~ one time during the mining operation through progressive backfilling, grading, and prompt revegetation in accordance with ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through ~~17.26.721~~ 17.24.721, and ~~17.21.723~~ 17.24.723 through 17.24.726~~, 17.24.728, and 17.24.730 through 17.24.733~~;

(b) through (g) remain the same.

AUTH: 82-4-202, 82-4-204, MCA
IMP: 82-4-231, 82-4-232, 82-4-234, MCA

REASON: Section (2)(a) is being amended to correct an internal reference cite because of amendments being made to the rule cross-referenced.

17.24.639 SEDIMENTATION PONDS AND OTHER TREATMENT FACILITIES (1) Sedimentation ponds, either temporary or permanent, may be used individually or in series and must:

(a) and (b) remain the same.

(c) provide an adequate sediment storage volume equal to:

(i) remains the same.

(ii) the accumulated sediment volume necessary to retain sediment for ~~1~~ one year in any discharge from an underground mine passing through the pond; ~~and~~

(d) be accurately surveyed immediately after construction in order to provide a baseline for future sediment volume measurements~~.~~; and

(e) be constructed as approved unless modified under ARM 17.24.642(3).

(2)~~(a)~~ Sedimentation ponds must provide the required theoretical detention time adequate to meet effluent limitations described in ARM 17.24.633 and for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event), plus the average inflow from the underground mine if applicable. "Theoretical detention time" is the average time that the design flow is detained in the pond and is further defined as the time difference between the centroid of the in-flow hydrograph and the centroid of the outflow hydrograph for the design event. Runoff diverted under ARM 17.24.635 through 17.24.637 away from the disturbed drainage areas and not passed through the sedimentation pond need not be considered in sedimentation pond design. In determining the runoff volume, the characteristics of the mine site, reclamation procedures, and on site sediment control practices shall be considered. Sedimentation ponds must provide a theoretical detention time of not less than 24 hours, or any higher amount required by the department~~, except as provided below~~.

~~(b) The department may approve a theoretical detention time of not less than 10 hours if the operator demonstrates~~

~~that:~~

~~(i) the improvement in sediment removal efficiency is equivalent to the reduction in detention time as a result of pond design. Improvements in pond design may include but are not limited to pond configuration, inflow and outflow facility locations, baffles to decrease inflow velocity and short-circuiting, and changes in surface areas; and~~

~~(ii) the pond effluent is shown to achieve and maintain applicable effluent limitations.~~

~~(c) The department may approve a theoretical detention time of not less than 10 hours when the operator demonstrates that the size distribution or the specific gravity of the suspended matter is such that applicable effluent limitations are achieved and maintained.~~

~~(d) The department may approve a theoretical detention time of less than 24 hours if the operator demonstrates to the department that a chemical treatment process to be used:~~

~~(i) will achieve and maintain the effluent limitations; and~~

~~(ii) is harmless to potentially affected biologic life and related environmental values.~~

~~(e) The calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times under (b), (c), and (d) above must be included in the permit application.~~

(3) The water storage resulting from inflow must be removed by a nonclogging dewatering device or a conduit spillway approved by the department and must have a discharge rate to achieve and maintain the required theoretical detention time. The inlet to the dewatering device must not be located at a lower elevation than the maximum elevation of the sediment storage volume.

(4) through (6) remain the same.

(7) Sedimentation ponds using embankments must be constructed to provide:

(a) a combination of ~~principal~~ principle and emergency spillways or a single spillway only to safely discharge the runoff from a 25-year, 24-hour precipitation event, or larger event specified by the department, assuming the impoundment is at full pool for spillway design. A single spillway must be constructed of non-erodible materials and designed to carry sustained flows, or be earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected. ~~If the sediment pond consists entirely of an excavation, no spillway is required.~~ The elevation of the crest of the emergency spillway must be a minimum of ~~1~~ one foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities must be approved by the department;

(b) through (9) remain the same.

(10) Unless otherwise approved by the department as adequate to maintain stability, ~~The~~ the minimum top width of the embankment must not be less than the quotient of (H+35)/5, where H is the height, in feet, of the embankment as measured from the

upstream toe of the embankment.

(11) The side slopes of the settled embankment must not be steeper than 3h:1v upstream and 2h:1v downstream, unless otherwise approved by the department.

(12) through (16) remain the same.

(17) All pond embankments must be designed and constructed in accordance with sound engineering and construction practices and certified by a ~~registered~~ licensed professional engineer experienced in the design of such structures.

(18) and (19) remain the same.

(20) If a sedimentation pond meets any of the criteria of 30 CFR 77.216(a), the following additional requirements must be met:

(a) An appropriate combination of principal and emergency spillways that will discharge safely the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the department, assuming the impoundment is at full pool for spillway design, must be provided;

(b) through (21)(b) remain the same.

(22)~~(a) Each pond~~ All ponds with embankments must be designed and inspected regularly during construction under the supervision of, and certified after construction by, a qualified ~~registered~~ licensed professional engineer experienced in the construction of impoundments.

(a) After construction, inspections and certifications must be made and reports filed with the department, pursuant to ~~in the same manner as for dams and embankments under~~ ARM 17.24.642~~(8)~~(4). Inspection and certification reports must be submitted until the embankments are removed.

(b) remains the same.

~~(c) After construction, inspections must be made and reports filed in the same manner as for dams and embankments under ARM 17.24.642(8).~~

(23) All ponds with embankments must be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications must be made to the department, in accordance with 30 CFR 77.216-3. With the approval of the department, dams not meeting the criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in TR-60 (See ARM 17.24.642(1)(f)) must be examined at least ~~4~~ four times per year. If an examination or inspection discloses that a potential hazard exists, the person who examined the impoundment must promptly inform the department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the department must be notified immediately. The department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(24)~~(a)~~ Sedimentation ponds and other treatment facilities must not be removed:

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

~~(b)~~ (25) When the sedimentation pond is removed, the affected land must be regraded and revegetated in accordance

with ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, ~~17.24.728, and 17.24.730 through 17.24.733~~ and 17.24.731.

~~(c)~~ If the department approves retention, the sedimentation pond must meet all the requirements for permanent impoundments of ARM 17.24.642 and 17.24.650.

~~(25)~~ (26)(a) Other treatment facilities must be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the department based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of ARM 17.24.633 will be met.

(b) remains the same.

(26) remains the same, but is renumbered (27).

~~(27)~~ (28)(a) Excavations which are sediment control structures during or after the mining operation must have perimeter slopes that are stable. Where surface runoff enters the impoundment area, the sideslope must be protected against erosion. An excavated sediment pond requires no spillway and must be able to contain the 10-year, 24-hour precipitation event, and conform with (1), (2), (4), (6), (18), (24) and (27).

(b) ~~Excavations~~ These excavations which are sediment control structures must be certified initially by a qualified ~~registered~~ licensed professional engineer. The department shall perform subsequent inspections. If any modifications are necessary, the department shall promptly notify the operator.

AUTH: 82-4-204, MCA
IMP: 82-4-231, MCA

REASON: The proposed addition of (1)(e) assures that the Department has approved the construction and maintenance of sediment ponds and other treatment facilities before they are constructed.

The proposed deletion of (2)(b) through (2)(e) is proposed because, although the option of designating a theoretical detention time has been available to permittees for more than 25 years, the Department has never been requested to approve a theoretical detention time of less than 24 hours.

The proposed amendment to (3) clarifies the part of the dewatering device that must be above the sediment storage volume. If the inlet to the dewatering device is placed below the maximum elevation of the sediment storage volume, the inlet may become clogged with sediment, preventing the dewatering device from properly functioning. This amendment expressly places into rule a condition that the Department has consistently required in practice.

The proposed amendment to (7) clarifies that its provisions apply only to sedimentation ponds that have embankments. The function of an emergency spillway is to safely discharge water from an overflowing pond while protecting the face of an embankment from erosion and possible failure. A sedimentation pond that is completely incised does not have an embankment to protect and, therefore, does not require an emergency spillway.

The proposed amendment to (7)(a) provides that the modeling for spillways must be based on the assumption that the impoundment is at full pool to address the worst-case scenario. The proposed amendment also deletes language that is no longer needed, given the clarification in (7) that the provision applies only to sediment ponds with embankments. Design criteria for totally incised ponds are found in new ARM 17.24.639(28).

The proposed amendments to (10) and (11) provide greater flexibility in the construction of embankments while maintaining an adequate safety factor. Specifically in regard to side slopes of an embankment, the current rule requires downstream sideslope to be no steeper than 3h:1v. The proposed amendment allows an operator to construct a downstream sideslope as steep as 2h:1v, which may represent a significantly more cost-effective method for constructing embankments.

The proposed amendment to (17) changes the phrase "registered professional engineer" to "licensed professional engineer" to conform to Montana Board of Professional Engineers and Land Surveyors terminology.

The proposed amendment to (20)(a) provides that the modeling for spillways must be based on the assumption that the impoundment is at full pool to address the worst-case scenario.

The proposed amendment to (22) clarifies that its provisions apply only to ponds with embankments. The criteria for totally incised ponds are addressed in new (28). The proposed amendment also changes the phrase "registered professional engineer" to "licensed professional engineer" to conform with Montana Board of Professional Engineers and Land Surveyors terminology. Finally, the proposed amendment adds certification requirements for ponds with embankments by referring to the certification requirements for embankments in ARM 17.24.642(4) and by expressly stating the duration that inspection and certification reports must be submitted to the Department.

Subsection (22)(c) is proposed for deletion because it is redundant to (22).

The proposed amendment to (23) clarifies that its provisions apply only to ponds with embankments. The criteria for totally incised ponds are addressed in new (28). The proposed amendment also adds a reference to ARM 17.24.642(1)(f) to where additional information on TR-60 is given, including a location where a copy of the TR-60 may be obtained.

The proposed amendment to (24)(b) (renumbered (25)) simplifies the reference to the applicable rules regarding revegetation and reflects changes in those rules.

The proposed amendment to (27)(a) (renumbered (28)(a)) adds design criteria for totally incised ponds. These criteria are not found elsewhere in the rules and provide performance and operational standards to assure the proper function of the sediment pond and to prevent impacts during its construction.

The proposed amendment to (27)(b) (renumbered (28)(b)) again changes the word "registered" to "licensed". See reason for (22) above.

17.24.642 PERMANENT IMPOUNDMENTS AND ~~TEMPORARY~~ FLOOD CONTROL IMPOUNDMENTS (1) Permanent impoundments are prohibited unless constructed in accordance with ARM 17.24.504 and 17.24.639, and have emergency spillways that will safely discharge runoff resulting from a 100-year, 24-hour precipitation event, assuming the impoundment is at full pool for spillway design, or larger event specified by the department. ~~authorized by the~~ The department may approve a permanent impoundment upon the basis of a demonstration that:

(a) through (e) remain the same.

(f) the design, construction, and maintenance of structures will achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act. PL 83-566 (16 USC 1006). Requirements for impoundments that meet the size or other criteria of the mine safety and health administration, 30 CFR 77.216(a) are contained in U.S. soil conservation service's Technical Release No. 60 (210-VI-TR60, October 1985, as revised through January 1991), "Earth Dams and Reservoirs," (TR-60). Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. soil conservation service's Practice Standard 378, "Ponds," October 1978. The technical release and practice standard are hereby incorporated by reference. Technical Release No. 60 and Practice Standard 378 are on file and available for inspection at the Helena office of the Department of Environmental Quality, 1520 E. 6th Ave., Helena, MT 59601; and

~~(g) the spillways are sized to meet the requirements of ARM 17.24.634(1)(d) and the impoundments are adequate for their intended purposes;~~

~~(h)~~ (g) the impoundment will be suitable for the approved postmining land use~~; and~~.

~~(i) the impoundment will have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions and a seismic safety factor of at least 1.2.~~

(2) All permanent impoundments must meet the design and performance requirements of ARM 17.24.639.

~~(3) Excavations that will impound water must meet the requirements of ARM 17.24.639(27).~~

~~(4) Slope protection to minimize surface erosion at the site and sediment control measures necessary to reduce the sediment leaving the site must be provided.~~

~~(5) All embankments, the surrounding areas, and diversion ditches disturbed or created by construction must be graded, fertilized, seeded, and mulched to comply with the requirements of ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.721, 17.24.723 through 17.24.726, 17.24.728, and 17.24.730 through 17.24.733, immediately after the embankment is completed, except that the active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop must be repaired~~

~~and revegetated to comply with the requirements of ARM 17.24.711.~~

~~(6) All dams and embankments meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in TR-60 must be routinely inspected by a qualified registered professional engineer or by someone under the supervision of a qualified registered professional engineer, in accordance with 30 CFR 77.216-3.~~

~~(7)~~ (3) All ~~dams and embankments~~ permanent impoundments must be routinely maintained during the mining operations. ~~Vegetative growth must be cut where necessary to facilitate inspection and repairs.~~ Ditches and spillways must be cleaned. ~~Any combustible material present on the surface, other than material such as mulch or dry vegetation used for surface stability, must be removed and all other appropriate maintenance procedures followed.~~

~~(8)~~ (4) All ~~dams and embankments~~ permanent impoundments must be inspected and certified to the department by a qualified ~~registered~~ licensed professional engineer, immediately after construction and annually thereafter, as having been constructed and maintained to comply with the requirements of this section. Inspection reports must be submitted ~~until the dams and embankments are removed or~~ until phase IV bond release~~, whichever occurs first~~. Certification reports must be submitted to the department annually, either concurrently with the annual report (ARM 17.24.1129) or with the second semi-annual hydrology report (ARM 17.24.645(8) and 17.24.646(2)). The operator shall retain a copy of each report at or near the minesite. Certification reports must include statements on:

(a) and (b) remain the same.

(c) existing storage capacity of the ~~dam or embankment~~ impoundment; and

(d) any other aspects of the ~~dam or embankment~~ impoundment affecting stability.

~~(9) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments must be submitted to the department and must comply with the requirements of this subchapter. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the modification must not be initiated until the department approves the plans.~~

(5)(a) Flood control impoundments are located upstream of disturbance areas for the purpose of preventing or controlling flooding or discharge and are not designed for sediment control or to be permanent.

(b) Flood control impoundments with embankments must be constructed in accordance with (1)(f) and ARM 17.24.639(7) through (21), and be inspected, maintained and certified according to (3), (4), (5)(a), and (5)(c) and ARM 17.24.639(22)(a) and (b) and (23).

(c) Excavated flood control impoundments:

(i) must be in compliance with ARM 17.24.639(18);

(ii) must have perimeter slopes that are stable; and

(iii) must be protected against erosion where surface runoff enters the impoundment area.

(d) An initial pond certification report and inspections must be made for excavated flood control impoundments in accordance with ARM 17.24.639(27)(b). If the volume of the flood control impoundment is used in determination of required volume for a downstream pond, annual certification reports are required in accordance with (5)(a), (5)(b), (5)(c), and (5)(e).

(e) Flood control impoundments must be approved prior to construction by the department.

~~(10) If an impoundment does not meet the requirements of (1) through (6) of this rule, the impoundment area must be regraded to approximate original contour and revegetated in accordance with ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.721, 17.24.723 through 17.24.726, 17.24.728, and 17.24.730 through 17.24.733.~~

(6) Permanent impoundments and flood control impoundments with embankments meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in TR-60 must be routinely inspected by a qualified licensed professional engineer or by someone under the supervision of a qualified licensed professional engineer, in accordance with 30 CFR 77.216-3.

(7) Plans for any enlargement, reduction in size, reconstruction, or other modifications of permanent impoundments and flood control impoundments must be submitted to the department and must comply with the requirements of this subchapter. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the modification must not be initiated until the department approves the plans.

AUTH: 82-4-204, MCA
IMP: 82-4-231, MCA

REASON: The proposed amendments to ARM 17.24.642 are designed to clear up confusion regarding the applicable criteria for specific types of sediment ponds and flood control ponds. As reorganized, ARM 17.24.642 addresses sediment ponds that will be retained for a postmining land use as permanent impoundments in (1) through (4) and flood control impoundments in (5). Provisions that are applicable to both permanent and flood control impoundments are addressed in (6) and (7). As reflected in the proposed amendment to the rule's title, temporary impoundments (except flood control impoundments) are not addressed in this rule because they fall under the provisions applicable to sediment ponds in ARM 17.24.639.

The proposed amendment to (1) relocates design criteria for permanent impoundments that was previously set forth in ARM 17.24.634(1)(d). It is more logical for the design criteria to be located in this rule rather than ARM 17.24.634, which addresses reclamation of drainage basins.

The proposed deletion of (1)(g) is necessary because it is redundant to the design criteria for spillways set forth in (1)

and new (1)(g).

The proposed deletion of (1)(i) is necessary because it is redundant to ARM 17.24.639(16).

The proposed amendment to (2) provides that it applies only to permanent impoundments; temporary impoundments are no longer addressed in this rule but fall under ARM 17.24.639.

The proposed deletion of (3), (4), and (5) is necessary because they are redundant to ARM 17.24.639(27), 17.24.639(18) and (19), and subchapter 7, respectively.

Existing (6) is being proposed for deletion and moved to new (7), a more logical place within the rule.

The proposed amendment to (7) (renumbered (3)) substitutes the phrase "permanent impoundment" for "dams and embankments." Incised ponds may permanently remain and serve a function in the postmining land use. By definition, however, they do not have dams or embankments and would be excluded under the present provision.

The proposed amendment to new (4) also deletes the requirement that vegetative growth on permanent impoundment be cut to facilitate inspections as redundant to the remaining provision in (3) that the permanent impoundments be routinely maintained. Finally, the proposed amendment deletes the last sentence because the only foreseeable combustible materials that would be on the slope of a permanent impoundment are mulch or dry vegetation used for surface stability, the removal of which is exempted by the provision.

The proposed amendment to (8) (renumbered (4)) substitutes the phrase "permanent impoundment" for "dams and embankments." Incised ponds may permanently remain and serve a function in the postmining land use. By definition, however, they do not have dams or embankments and would be excluded under the present provision. The proposed amendment also changes the phrase "registered professional engineer" to "licensed professional engineer" to conform with Montana Board of Professional Engineers and Land Surveyors terminology. The proposed amendment deletes provisions that are applicable to temporary impoundments and that are now set forth in 17.24.639(22)(a). The proposed amendments to (8)(c) and (d) (now (4)(c) and (d)) substitute the phrase "permanent impoundment" for "dams and embankments." Incised ponds may permanently remain and serve a function in the postmine land use. By definition, however, they do not have dams or embankments and would be excluded under the present provision.

Section (9) is proposed for deletion because its provisions are being incorporated in new (7).

Proposed new (5) adds necessary design, certification and reporting criteria for flood control structures upstream of disturbance areas. These criteria are necessary to assure that the flood control impoundment is structurally sound and has a sufficient volume to prevent the flow of run-on to disturbed areas under foreseeable circumstances. As appropriate, the provisions addressing flood control structures upstream of disturbance areas refer to applicable rules.

The proposed deletion of (10) removes an unnecessary

reference. The referenced rules require reclamation of all facilities that are not maintained on a permanent basis.

The proposed addition of (6) relocates a provision previously set forth in ARM 17.24.642(6) because it applies to both permanent and flood control impoundments. The proposed amendment also changes the phrase "registered professional engineer" to "licensed professional engineer" to conform to Montana Board of Professional Engineers and Land Surveyors terminology.

The proposed addition of (7) relocates a provision previously set forth in ARM 17.24.642(9) because it applies to both permanent and flood control impoundments. The proposed amendment also deletes extraneous language; the term "impoundment" includes dams.

17.24.645 GROUND WATER MONITORING (1) Ground water levels, ~~infiltration rates,~~ subsurface flow and storage characteristics, and the quality of ground water must be monitored based on information gathered pursuant to ARM 17.24.304 and the monitoring program submitted pursuant to ARM 17.24.314 and in a manner approved by the department to determine the effects of strip or underground mining operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems in the ~~mine plan~~ permit and adjacent areas. When operations may affect the ground water system, ground water levels and ground water quality must be periodically monitored using wells that can adequately reflect changes in ground water quantity and quality resulting from such operations.

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

(3) The department may require the permittee to expand the ground water monitoring system whenever a significant impact to the hydrologic balance of the permit and adjacent area is likely and the expanded monitoring is needed to adequately monitor the ground water system. As specified and approved by the department, additional ~~hydrologic tests~~ observations and analyses, such as infiltration tests and aquifer tests, must be undertaken by the permittee to demonstrate compliance with this rule.

(4) through (5)(c) remain the same.

(6) Methods of sample collection, preservation and sample analysis must be conducted in accordance with 40 CFR Part 136 titled "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (July ~~1997~~ 2003) and the department's document titled "Circular WQB-7, Montana Numeric Water Quality Standards", ~~November 1998~~ January 2004 edition. Copies of Circular WQB-7 are available at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT ~~59601~~ 59620-0901. Sampling and analyses must include a quality assurance program acceptable to the department.

(7) and (8) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-231, 82-4-232, MCA

REASON: The proposed amendment to (1) deletes the provision for infiltration rate monitoring. Infiltration rates are very site specific and may vary significantly even at sites in close proximity. Thus, infiltration rates in the context of general mine reclamation are of limited value. The Department retains the authority to require infiltration rate monitoring in appropriate circumstances under (3). The proposed amendment also adds a reference to ARM 17.24.314 for completeness. Finally, the proposed amendment substitutes "permit area" for "mine plan area" to more closely parallel the provision of 82-4-231(10)(k), MCA, requiring an operator to minimize the disturbances to the prevailing hydrologic balance at the mine site and adjacent areas. Features that may affect the prevailing hydrologic balance, such as sediment ponds and flood control features, may be at the mine site and included in the "permit area" but outside the "mine plan area." Thus, it is appropriate to use the more inclusive term.

The proposed amendment to (3) uses more appropriate terms to describe the scope of additional ground water monitoring requirements that may be required by the Department.

The proposed amendment to (6) refers to the most recent versions of the cited documents.

17.24.646 SURFACE WATER MONITORING (1) Surface water monitoring must be based on information submitted pursuant to ARM 17.24.304 and must be conducted in accordance with the monitoring program submitted under ARM 17.24.314 and approved by the department. Monitoring must:

(a) through (3) remain the same.

(4) After disturbed areas have been regraded and stabilized according to ARM 17.24.501, the operator shall monitor surface water flow and quality. Data from this monitoring ~~may~~ must be used to ~~demonstrate that~~ determine whether the quality and quantity of runoff without treatment is consistent with the requirements of this rule to minimize disturbance to the prevailing hydrologic balance, to demonstrate that the drainage basin has stabilized to its previous, undisturbed state, and to attain the approved postmining land use. These data ~~may~~ must also ~~provide a basis for approval by the~~ be used by the department ~~for~~ to review removal of water quality or flow control systems and for bond release. With department approval, other information or methods, such as models, may be used, in conjunction with monitoring data, for these purposes.

(5) remains the same.

(6) Methods of sample collection, preservation and sample analysis must be conducted in accordance with 40 CFR Part 136 titled "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (July ~~1997~~ 2003) and Part 434 titled "Coal Mining Point Source Category BPT, BAT, BCT Limitations and New Source Performance Standards" (~~July 1997~~ January 2002), and the ~~November 1998~~ January 2004 version of the department's document titled "Circular WQB-7, Montana Numeric Water Quality

Standards". Copies of 40 CFR Part 136, 40 CFR 434, and Circular WQB-7 are available at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT ~~59601~~ 59620-0901. Sampling and analyses must include a quality assurance program acceptable to the department.

(7) remains the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-231, 82-4-232, MCA

REASON: The proposed amendment to (1) adds a requirement that the surface water monitoring program be based on baseline information developed during the permit application process. This information was relied on in issuing the permit and provides a foundation for the surface water monitoring program that has already been reviewed.

The proposed amendment to (4) makes use of the data gathered in the surface water monitoring program mandatory, rather than discretionary, in determining whether applicable reclamation standards are being met, whether to discontinue water quality or flow control systems, and whether to release bond. Use of these data ensures that these decisions are based on the best data possible and to prohibit bias from intruding in these decisions by reliance on selective data. The proposed amendment adds a provision to allow consideration of other information or methods (e.g., computer models) that are legitimate complementary tools.

17.24.701 REMOVAL OF SOIL (1) and (2) remain the same.

~~(3) The operator shall limit the area from which soil is removed at any 1 time to minimize wind and water erosion. The operator shall take other measures, as necessary and with departmental approval, to control erosion.~~

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

(4) Soil removal is not required for minor disturbances which occur at the site of small structures such as power poles, signs or fences or where operations will not destroy vegetation and cause erosion.

AUTH: 82-4-204, 82-4-231, MCA
IMP: 82-4-232, MCA

REASON: The proposed deletion of (3) is necessary because it is redundant to ARM 17.24.638(1)(c) and (2)(a), 17.24.701(4) (renumbered (3) in this rule amendment), and 17.24.761 (air quality), and the provisions of a required air quality permit.

The proposed addition of (4) is necessary to allow an operator to install power poles, signposts, fence posts, etc., without removing and protecting the soil resource. The amount of soil associated with these types of disturbances is insignificant and it would often be impracticable to salvage the soil. Reclamation of these minor disturbances will not be compromised by allowing this flexibility.

17.24.702 REDISTRIBUTION AND STOCKPILING OF SOIL

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

(4) Prior to ~~soil~~ redistribution of soil or soil substitutes, regraded areas must be:

(a) sampled and analyzed to determine the physicochemical nature of the surficial spoil material in accordance with ARM 17.24.313~~(5)(j)~~(1)(g)(xi);

(b) scarified on the contour~~, whenever possible,~~ to a minimum 12-inch depth, unless otherwise approved by the department upon a determination that the purpose of this subsection will be met, to eliminate any possible slippage potential at the soil/spoil interface, to relieve compaction, and to promote root penetration and permeability of spoils. If no adverse effects to the redistributed material or postmining land use will occur, such treatments may be conducted after the soil or soil substitute is replaced.

(5) remains the same.

(6) Soil must be redistributed in a manner that achieves thicknesses consistent with soil resource availability and appropriate for the postmining vegetation, land uses, contours, and surface water drainage systems. ~~Soil replacement must be done on the contour, whenever possible.~~

(7) remains the same.

AUTH: 82-4-204, MCA
IMP: 82-4-232, MCA

REASON: The proposed amendment to (4) makes its provisions applicable to soil substitutes (scoria, sandy spoil, other suitable spoil, etc.) that are commonly used to provide a suitable growth media for specific reclamation practices, such as the establishment of woody species. The same steps need to be taken in preparation of distributing soil substitutes as for soil.

The proposed amendment to (4)(b) provides operators more flexibility following redistribution of soil or soil substitutes while maintaining adequate environmental protections such as the minimization of soil erosion and the provision of a suitable soil/spoil interface.

The proposed amendment to (6) deletes a current requirement that is not a recommended performance standard under all circumstances. Whether soil should be replaced on the contour depends on the slope of the regraded landscape. It is appropriate for the operator to initially determine when the slope of the regraded landscape requires application of this method. The Department will maintain its oversight of the result of the operator's method of soil replacement and require the operator to perform remedial measures if the soil placement results in slope stability or soil erosion problems. This division of responsibility is an efficient use of the Department's resources.

17.24.703 SUBSTITUTION OF OTHER MATERIALS FOR SOIL

(1) Any application for permit or accompanying reclamation

plan that for any reason proposes to use materials other than, or along with, soil and final surfacing of spoil or other disturbances must document problems of soil quantity or quality. The following requirements must be met before use of material other than soil will be allowed:

(a) The operator shall demonstrate and the department shall find that the resulting medium is at least as capable as the soil of supporting the approved vegetation and postmining land use (see ARM 17.24.304~~(7)~~(1)(g) and ~~(11)~~(1)(k)).

(b) The medium must be the best available in the permit area to support revegetation.

(2) remains the same.

AUTH: 82-4-204, 82-4-231, MCA
IMP: 82-4-232, MCA

REASON: The proposed amendment to (1)(b) replaces "vegetation" with "revegetation" because the medium is to be used in revegetating the postmining landscape.

17.24.711 ESTABLISHMENT OF VEGETATION (1) ~~A diverse, effective, and permanent vegetative cover of predominantly native species (except as provided in 82-4-233(4) or 82-4-235(2), MCA, of the same seasonal variety and utility as the vegetation indigenous to the area of land to be affected must be established. Revegetation must be capable of self-regeneration. This vegetative cover must also be capable of meeting the criteria set forth in 82-4-233, MCA, and must be established on all areas of land affected except on road surfaces and below the low-water line of permanent impoundments that are approved as a part of the postmining land use. Vegetative cover is considered of the same seasonal variety if it consists of a mixture of species of equal or superior utility when compared with the natural vegetation during each season of the year.~~ Vegetation must be reestablished in accordance with 82-4-233(1), (2), (3), and (5), MCA, as follows:

(a) Sections 82-4-233(1), (2), and (3), MCA, state: "(1) The operator shall establish on regraded areas and on all other disturbed areas, except water areas, surface areas of roads, and other constructed features approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

"(a) diverse, effective, and permanent;

"(b) composed of species native to the area or of introduced species when desirable and necessary to achieve the postmining land use and when approved by the department;

"(c) at least equal in extent of cover to the natural vegetation of the area; and

"(d) capable of stabilizing the soil surface in order to control erosion to the extent appropriate for the approved postmining land use.

"(2) The reestablished plant species must:

"(a) be compatible with the approved postmining land use;

"(b) have the same seasonal growth characteristics as the

original vegetation;

"(c) be capable of self-regeneration and plant succession;

"(d) be compatible with the plant and animal species of the area; and

"(e) meet the requirements of applicable seed, poisonous and noxious plant, and introduced species laws or regulations.

"(3) Reestablished vegetation must be appropriate to the postmining land use so that when the postmining land use is:

"(a) cropland, the requirements of subsections (1)(a), (1)(c), (2)(b), and (2)(c) are not applicable;

"(b) pastureland or grazing land, reestablished vegetation must have use for grazing by domestic livestock at least comparable to premining conditions or enhanced when practicable;

"(c) fish and wildlife habitat, forestry, or recreation, trees and shrubs must be planted to achieve appropriate stocking rates."

(b) Section 82-4-233(5), MCA, states: "For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984, using a seed mix that was approved by the department and on which the reclaimed vegetation otherwise meets the requirements of subsections (1) and (2) and applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable and necessary to achieve the postmining land use and may compose a major or dominant component of the reclaimed vegetation."

~~(2) Reestablished plant species must be compatible with the plant species of the area.~~

~~(3) Reestablished vegetation must meet the requirements of applicable state and federal laws and regulations governing seeds, poisonous and noxious plants and introduced species.~~

~~(4)~~ (2) For areas designated prime farmland ~~that are to be revegetated to a vegetative cover as previously described in this rule~~, the requirements of ARM 17.24.811 and 17.24.815 must ~~also~~ be met.

~~(5) Vegetative cover and stocking and planting of trees and shrubs must not be less than that required to achieve the approved postmining land use.~~

~~(6)~~ (3) The department shall determine cover, planting, and stocking specifications either on a programmatic basis or for each operation based on local and regional conditions after consultation with and approval by:

(a) remains the same.

(b) the department of natural resources and conservation for reclamation to land uses involving ~~commercial forest land~~ forestry.

AUTH: 82-4-204, MCA
IMP: 82-4-233, 82-4-235, MCA

REASON: The proposed amendments to (1) reflect enactment of HB 373 by the 2003 Legislature, incorporating the new statutory requirements for the establishment of vegetation. The proposed amendment sets forth the text of 82-4-233, MCA, for convenient reference.

The proposed deletion of (2), (3) and (5) is necessary because their provisions are now incorporated into the Act and are reiterated in proposed new (1).

The proposed amendment to (4) (renumbered (2)) deletes unnecessary language. The vegetative cover will always be the cover described earlier in the rule.

The proposed addition of (3) allows the Department greater flexibility in the development of revegetation specifications. The proposed amendment would allow development of specifications on a broad level that could then be applied to individual operations rather than the development of specifications for each operation. This approach promotes the efficient use of both the Department's and an operator's resources.

The proposed amendment to (3)(b) replaces "commercial forest land" with "forestry" to reflect enactment of HB 373 by the 2003 Legislature.

17.24.714 ~~COVER CROPS AND MULCHING~~ SOIL STABILIZING PRACTICES (1) ~~As soon as practical,~~ Such practices as seedbed preparation, ~~a mulch~~ mulching, or ~~a~~ cover ~~crop~~ cropping ~~of small grains, grasses, or legumes, or both,~~ must be used on all regraded and resoiled areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil until an adequate, permanent cover is established. ~~Mulch must be anchored to the soil surface where appropriate to ensure effective protection of the soil and vegetation. The mulch or the cover crop~~ This requirement~~, or both,~~ may be suspended if the operator demonstrates to the department's satisfaction that ~~they are~~ it is not needed to control air or water pollution and erosion.

AUTH: 82-4-204, MCA
IMP: 82-4-233, 82-4-235, MCA

REASON: The proposed amendment deletes the phrase "as soon as practical" and the provision requiring the anchoring of mulch. Applying mulch and cover crops as soon as practical after seeding and the anchoring of the mulching material are inherent in the use of mulch and cover crops to control erosion, to promote germination of seeds, and to increase moisture retention and need not be expressly stated.

17.24.716 METHOD OF REVEGETATION (1) All revegetation must be in compliance with the approved reclamation plan and carried out in a manner that encourages ~~a~~ prompt ~~vegetative cover and recovery of productivity levels~~ vegetation establishment.

(2) remains the same.

(3) ~~The operator shall utilize seed and seedlings geno-typically adapted to the area when available in sufficient quality and quantity.~~ Seeding rates must be calculated on a pure live seed basis, and purity and germination percentages must be documented.

(4) To the extent possible, the operator shall utilize

seed mixes free of weedy or other undesirable species and shall utilize the best reclamation and land management techniques available to prevent establishment of noxious weeds on all disturbed and reclaimed areas. The operator shall control noxious weeds in accordance with the Noxious Weed Management Act (7-22-2101 through 7-22-2153, MCA, as amended). ~~Specific control plans must be approved by the department.~~

~~(5) Introduced species may:~~

~~(a) be substituted for native species as part of an approved plan for alternate revegetation;~~

~~(b) constitute more than 50% of the revegetation cover as provided in 82-4-233(4) or in 82-4-235(2), MCA; or~~

~~(c) be established as a part of the permanent diverse vegetative cover in compliance with ARM 17.24.728(2).~~

AUTH: 82-4-204, MCA
IMP: 82-4-233, 82-4-235, MCA

REASON: The proposed amendment to (1) deletes unnecessary language. Cover and productivity standards are not within the scope of this rule and are covered later in subchapter 7.

The proposed amendment to (3) deletes a requirement that an operator use seed and seedlings adapted to the area because seed sources featuring only locally adapted seeds or seedlings are often not economically available. While it is in the best interest of the operator to use seed and seedlings adapted to the area because of better survival, growth, reproduction, and maintenance of the local/regional gene pool, the operator may select seeds/seedlings that are not genotypically adapted to the area. If the seeding/planting is unsuccessful, the operator will be required to reseed/replant.

The proposed amendment to (4) deletes a provision requiring department approval of weed control plans because weed control falls under the authority of county weed boards. The Department can require an operator to control weeds in accordance with a county-approved weed control plan by incorporating it into the mine permit.

The proposed deletion of (5) is necessary because those provisions are redundant to the proposed amendments to ARM 17.24.711(1).

17.24.717 PLANTING OF TREES AND SHRUBS (1) ~~Whenever tree~~ Tree or shrub species ~~are~~ necessary to ~~comply with 82-4-233, MCA, the permittee shall plant trees~~ meet the approved postmining land use must be adapted for local site conditions and climate. Trees and shrubs must be planted in combination with ~~an~~ herbaceous ~~cover of grains, grasses, legumes, forbs, or woody plants to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, and regeneration capabilities native to the area~~ species as necessary to achieve the postmining land use and as approved by the department. If necessary to increase tree and shrub survival, seeding of the herbaceous ~~cover~~ species may be delayed providing that measures are taken to control air and water

pollution and erosion.

AUTH: 82-4-204, MCA
IMP: 82-4-233, 82-4-235, MCA

REASON: The proposed amendment fills a gap in the current rules by broadening ARM 17.24.717 to include planting requirements for shrubs. Shrubs are a woody species like trees and, thus, should be treated similarly. The proposed amendment deletes a reference to "cover of grains, grasses, legumes, forbs or woody plants" as unnecessary examples of herbaceous species. The proposed amendment also deletes vegetation standards that will be set forth in ARM 17.24.711(1) under these proposed amendments. Additional provisions of the proposed amendment require the planting of trees and shrubs as necessary to achieve the postmining land use to reflect the statutory requirement of 82-4-233(2)(a), MCA, and allow an operator flexibility in the timing of herbaceous seeding to reduce competition with the tree and shrub plantings/seedings.

17.24.718 SOIL AMENDMENTS, ~~AND OTHER~~ MANAGEMENT TECHNIQUES, AND LAND USE PRACTICES (1) remains the same.

(2) An operator ~~shall~~ may use ~~any other means necessary~~ only normal husbandry practices to ~~insure~~ ensure the establishment of ~~a diverse and permanent vegetative cover, including irrigation, management, fencing, or other measures as approved by the department~~ vegetation consistent with the approved reclamation plan.

(3) Reclamation land use practices including, but not limited to, grazing, haying, or chemical applications, may not be conducted in a manner or at a time that interferes with establishment and/or persistence of seeded and planted grasses, forbs, shrubs, and trees or with other reclamation requirements.

AUTH: 82-4-204, MCA
IMP: 82-4-233, 82-4-235, MCA

REASON: The proposed amendment to (2) requires operators to use only normal husbandry practices to manage reclaimed areas following seeding. Normal husbandry practices are widely used and accepted by private, state, and federal land managers and land owners and have a proven track record of achieving appropriate revegetation for approved postmining land uses.

The proposed addition of (3) addresses management practices that could, if applied improperly, negatively impact revegetation and affect the operator’s ability to obtain phase III bond release. The practices used by operators to manage vegetation on reclaimed areas include livestock grazing (currently discussed in ARM 17.24.719) as well as haying and chemical applications. Under the proposed amendment, the operator is responsible for using management practices that do not interfere with reclamation requirements.

17.24.723 MONITORING (1) The operator shall conduct

periodic vegetation, soils, and wildlife ~~and other~~ monitoring under plans submitted pursuant to ARM 17.24.312(1)(d), 17.24.313(1)(f)(iv), and 17.24.313(1)(g)(iii) and the approved postmining land use as ~~prescribed or~~ approved by the department.

(2) The data and a narrative interpretation thereof must be submitted on a schedule and in a manner approved by the department. Detail of the narrative interpretation must be determined in consultation with the department to demonstrate compliance with the Act, other state and federal laws, and applicable rules in this chapter.

(3) If the data indicate that corrective measures are necessary, ~~such measures must be proposed to the department. Upon departmental approval,~~ the operator shall implement ~~the~~ corrective measures to comply with permit requirements.

(4) remains the same.

~~(5) See also ARM 17.24.645, 17.24.646, and 17.24.1129.~~

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-233, 82-4-235, MCA

REASON: The proposed amendment to (1) removes the unnecessary phrase "and other monitoring." The only monitoring requirements addressed by the rule are those related to vegetation, soils, and wildlife. Other monitoring programs are addressed in ARM 17.24.645 (ground water monitoring) and 17.24.646 (surface water monitoring).

The proposed amendment to (2) specifies additional information in narrative interpretation of monitoring data so that the Department may determine whether the operation is complying with ARM 17.24.751 and other state and federal laws (e.g., Endangered Species Act).

The amendment to (3) is proposed to place the responsibility to implement corrective measures on the operator to stay in compliance with the Act, rules and approved permit. Additional Department approval is unnecessary, as the Department has already approved the mining permit.

The proposed amendment to (5) deletes rule references that are not necessary given the proposed amendment to (1) limiting the scope of this rule to vegetation, soils, and wildlife monitoring.

17.24.724 ~~USE OF~~ REVEGETATION ~~COMPARISON STANDARDS~~ SUCCESS CRITERIA ~~(1) Reference areas must be established for each native plant community type or group of similar native community types found in the area to be disturbed by mining.~~

~~(2)~~ (1) Success of revegetation must be ~~measured on the basis of~~ determined by comparison with ~~unmined~~ reference areas or by comparison with technical standards ~~from historical data~~. ~~These~~ Reference areas~~,~~ and standards must be representative of vegetation and related site characteristics occurring on lands exhibiting good ecological integrity. The department must approve the reference areas, technical standards, and methods of comparison ~~must be approved by the department~~. ~~The department may require that reference areas be used in conjunction with~~

~~historical data technical standards to assess success of revegetation for phase III bond release whenever historical data technical standards are not adequate to determine premine conditions for comparison. More than 1 reference area or historical record must be established for vegetation types with significant variation due to edaphic factors, past management, size of the permit area, or other factors. Each reference area or area from which historical records are derived must be mapped at a scale of 1":400'. Locations of all sample points must be noted on 1":400' scale maps submitted to the department. The applicant shall designate which reference areas or historical data records will be used for comparison to specific postmine vegetation communities.~~

~~(3)(a)~~ (2) Reference areas are parcels of land chosen for comparison to revegetated areas. A reference area is not required for vegetation parameters with approved technical standards. Reference areas must be in a condition that does not invalidate or preclude comparison to revegetated areas and the operator must: ~~be managed such that they are in at least a "good" range condition, as defined by the US natural resources conservation service. When this required range condition has been achieved, the reference area must be grazed at an approved level.~~

(a) have legal right to control the management of all approved reference areas; and

(b) manage reference areas in a manner that is comparable to the management of the revegetated areas and in accordance with the approved postmining land use.

~~(b) Where the operator has an approved enclosed reference area, prior to February 3, 1978, grazing is not necessary on that reference area. In this case the success of revegetation must be based on the ungrazed reference area. These operators shall initiate a study approved by the department that will demonstrate that the revegetated areas are capable of withstanding grazing pressure.~~

~~(c) If past management of the reference area has resulted in a disclimax such that the required range condition cannot be attained, the department may approve use of this area, may require designation of a different reference area, or may approve or require use of technical standards derived from historical data for determining success of revegetation.~~

~~(4)(a) Revegetated areas and reference areas, when appropriate, must be grazed at an approved level for at least 2 years during the last 5 years of responsibility for vegetative establishment.~~

~~(b) Vegetation measurements (exclusive of grazing) must be conducted on the reclaimed areas and on reference areas when appropriate for at least the last 2 years of this period of responsibility.~~

~~(c) Grazing must be conducted in a manner and at a time that does not preclude acquisition of appropriate vegetation production, cover and diversity data.~~

~~(5)~~ (3) Technical standards may be derived from:

(a) historical data generated for a sufficient time period

to encompass the range in climatic variations typical of the premine or other appropriate area; or

(b) data generated from revegetated areas that are compared to historical data representing the range of climatic conditions comparable to those conditions existing at the time revegetated areas are sampled; or

(c) U.S. department of agriculture, U.S. department of the interior, or other publications or sources relevant to the area and land use of interest and approved by the department. ~~may be used as standards of comparison with revegetated areas with the following conditions:~~

~~(a) vegetative cover, production, diversity, density, and utility data (see ARM 17.24.726) must be obtained from the premine area or from an area approved by the department that exhibits comparable vegetative cover, production, diversity, density, and utility, as well as comparable management, soil type, topographic setting (slope, aspect, etc.), and climate, in comparison to those of the premine area;~~

~~(b) data must be generated for a sufficient time period to encompass the range in climatic variations typical of the premine or other appropriate area, or data generated from revegetated areas must be compared to historical data generated only during climatic conditions comparable to those conditions existing at the time revegetated areas are sampled; and~~

~~(c) historical records must be established for each native plant community or group of native communities that will be compared to specific reclaimed area plant communities.~~

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-233, 82-4-235, MCA

REASON: The proposed deletion of (1) is necessary because it is redundant to the provisions of the proposed amendment to (2) which is renumbered as (1).

The proposed amendment to (2) (renumbered (1)) provides streamlined criteria for the establishment and use of reference areas or technical standards. The reference areas or technical standards must reflect "good ecological integrity" which is defined in a proposed amendment to ARM 17.24.301. The concept is based on a compilation of works by many well-respected professionals and is a widely accepted approach to defining conditions that should be present in an ecological setting such as a reference area. The objective is to ensure that an appropriate combination of topography, substrate, and vegetative components are selected for comparison with reclaimed areas.

Restricting selection of reference areas and standards to sites and criteria that reflect good management, good vegetation, and good overall ecologic condition is necessary to meet federal reclamation mandates under the Surface Mining Control and Reclamation Act of 1977, as well as related federal rules and state requirements. Such restriction is also necessary to be consistent with management plans and stipulations enacted by federal, state, and local land management agencies, conservation and weed management districts,

etc. Good ecological integrity is a minimum standard and point of reference used by private landowners and institutions that reflects minimal expectations for stewardship and for correcting repercussions of poor management.

The proposed amendment to renumbered (2) provides criteria for reference areas. The reference areas must be representative of the ecological conditions that should be reasonably expected at the end of the minimum responsibility period (10 years), be under the legal control of the operator, and be managed in a manner comparable to the management of the revegetated area. These criteria assure the suitability of the reference area at the time it is selected and the subsequent maintenance of the reference area's integrity so that scientifically valid comparisons can be made when bond release is requested.

The proposed amendment deletes the unnecessary provision of former (3)(b). None of the currently approved reference areas were approved prior to February 3, 1978. The proposed amendment also deletes former (3)(c) because it is redundant to renumbered (2)(b).

The proposed deletion of (4)(a), addressing grazing of revegetated and reference areas, is necessary because the provision is redundant to ARM 17.24.718(2) and (3) (addressing management of revegetation, including grazing), proposed (2)(b) (management of reference areas). The operator is being given discretion as to which management practices to use to maintain or achieve the desired ecological condition.

The proposed deletion of (4)(b) is necessary because it is redundant to proposed ARM 17.24.726(3).

The proposed deletion of (4)(c) is necessary because it is redundant to proposed ARM 17.24.718(2) and (3), and proposed (2) and (2)(b).

The proposed amendment to renumbered (3) provides more succinct criteria for the development of technical standards to be used in evaluating revegetation success. The criteria allow for flexibility in developing the technical standard while ensuring that the technical standard is appropriate to evaluate revegetation success.

The proposed deletion of (5)(a), (b), and (c) is necessary because the sections are redundant to proposed (3)(a), (b), and (c).

17.24.725 PERIOD OF RESPONSIBILITY (1) Except as provided in 82-4-235~~(2)~~(3), MCA, et seq., the minimum period of responsibility for reestablishing vegetation begins after the last seeding, planting, fertilizing, irrigating, or other activity related to ~~final~~ phase III reclamation as determined by the department unless it can be demonstrated that such work is a normal husbandry practice that can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success.

(2) remains the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA

IMP: 82-4-233, 82-4-235, MCA

REASON: The proposed amendment changes a statutory reference to reflect the enactment of HB 373 by the 2003 Legislature. The proposed amendment also more clearly indicates the applicable phase of bond release.

17.24.726 VEGETATION MEASUREMENTS ~~PRODUCTION, COVER, DIVERSITY, DENSITY, AND UTILITY REQUIREMENTS~~ (1) Standard and consistent field and laboratory methods must be used to obtain and evaluate vegetation ~~production, cover, diversity, density, and utility data~~ data consistent with 82-4-233 and 82-4-235, MCA, and to compare revegetated area data with reference area data and/or with ~~historical record~~ technical standards. Specific field and laboratory methods used and schedules of assessments must be detailed in ~~the application and must~~ a plan of study and be approved by the department. Sample adequacy must be demonstrated. In addition to these and other requirements described in this rule, the department shall supply guidelines regarding acceptable field and laboratory methods.

(2) ~~The current vegetative production must be measured by clipping and weighing each morphological class on the revegetated area and the reference areas (morphological classes must be segregated by native and introduced: annual grasses, perennial cool-season grasses, perennial warm-season grasses, annual forbs, biennial forbs, perennial forbs, shrubs and half-shrubs). Vegetative cover must be documented for each species present on revegetated areas and on all other areas where a vegetation data base is required. Except as provided in 82-4-233(4) or 82-4-235(2), MCA, at least 51% of the species present on the revegetated areas must be native species genotypically adapted to the area. A countable species must be contributing at least 1% of the live cover for the area.~~ Production, cover, and density shall be considered equal to the approved success standard when they are equal to or greater than 90% of the standard with 90% statistical confidence, using an appropriate (parametric or non-parametric) one-tail test with a 10% alpha error.

~~(3) The sampling techniques for measuring success must use a 90% statistical confidence interval for total production and total live cover and for other parameters as required by the department using a 1-sided test with a 0.1 alpha error. The following vegetation parameters for revegetated area data must be at least 90% of identically composited reference area data and/or technical standards derived from historical data:~~

~~(a) total vegetative production (totals derived from summation of morphological classes described in (2) of this rule);~~

~~(b) total live vegetative cover; and~~

~~(c) density (of native and introduced: trees, shrubs, and half-shrubs).~~

~~(4) The diversity of the revegetated area, that is, richness and evenness, must be comparable to the reference area or historical data technical standard in terms of species and~~

~~morphological class composition and the importance of those species and morphological classes within the vegetative community.~~

~~(5) If 1 morphological class is composed of undesirable species for both wildlife and livestock, a lesser cover and production in that class may be accepted by the department if it is offset by a more desirable cover and production in another class.~~

~~(6) Postmine vegetative cover and production and species composition must be of equal utility compared to those of the applicable reference area and/or historical record standard. The method used for demonstrating utility must be approved by the department. Utility data must be generated in a manner and at a time approved by the department, as well as in compliance with ARM 17.24.323, 17.24.724, and 17.24.751.~~

~~(7) Plant species and morphological classes must be distributed on reclaimed areas in a manner which is at least as effective for the postmine land use as the premine condition. The means of achieving species and morphological class distribution must be addressed in the approved revegetation plan and success must be determined through comparison with the appropriate reference area, historical record standard, or both.~~

~~(8)~~ (3) The revegetated areas must meet the performance standards in (1) ~~through (7) of this rule~~ and (2) for at least two of the last ~~2~~ four years of the phase III bond period. The performance standards must also be met at the time of the bond release inspection, pursuant to ARM 17.24.1113(1).

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

AUTH: 82-4-204, MCA
IMP: 82-4-233, 82-4-235, MCA

REASON: The title was abbreviated ensuring that all vegetation measurements are addressed without listing all of the measurements that are required.

In (1), the references to 82-4-233 and 82-4-235, MCA, include the required vegetation parameters that need to be measured; therefore, the reference to production, cover, diversity, density, and utility data is no longer needed. A plan of study is what the operators have been submitting on a regular basis for approval by the Department. Submittal of a plan of study prior to conducting vegetation monitoring or sampling offers an opportunity to make adjustments when needed; if the plan is in the approved permit, revisions must be done through the minor revision process. Thus, the last change to this section is recommended as a more workable, as well as flexible, avenue for submittal and approval of vegetation monitoring/sampling plans.

Section (2) has been revised to define how cover, production and density will be determined. It makes the determination of these three criteria consistent with the revised Act (re: HB 373 passed by the 2003 legislature). It also relocates criteria that were previously found in (3) which is proposed for deletion.

Deletion of (3) is proposed because it is now covered in proposed (2).

Diversity standards currently existing in (4) have been modified by the 2003 legislative changes to the Act (codified in 82-4-235(1)(d), MCA), and therefore are proposed for deletion.

Seasonality standards currently existing in (5) have been modified by the 2003 legislative changes to the Act (codified in 82-4-235(1)(g), MCA), and therefore are proposed for deletion.

It is assumed that utility is adequately provided for if cover, production, diversity, density and seasonality requirements are met. Therefore, the need to require additional evaluation of utility is unwarranted, and (6) is proposed to be deleted.

The provisions of existing (7) have been modified by the 2003 legislative changes to the Act (codified in 82-4-235, MCA), and therefore are proposed for deletion.

The first proposed revision of existing (8) (new (3)) involves a change to the rule sections referenced to reflect the other proposed changes to ARM 17.24.726. The other revisions modify criteria for phase III bond release. Phase III bond release is appropriate if an operator meets revegetation standards in at least two of the last four years of the liability period. Meeting the revegetation standards for this period of time demonstrates long term revegetation success while assuring that the operator is not penalized because unfavorable conditions (e.g., below normal precipitation, grasshopper infestations, or severe storms) do not allow revegetation to be properly evaluated during one or both of the last two years of the phase III bond period. The operator, however, is not relieved of the responsibility to maintain appropriate vegetative conditions throughout the phase III bond liability period, as the Department has the authority to inspect all areas and require additional data if problems are observed in the field (e.g., during bond release inspections).

17.24.751 PROTECTION AND ENHANCEMENT OF FISH, WILDLIFE, AND RELATED ENVIRONMENTAL VALUES (1) No surface or underground mining operation may be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the secretary of the interior or which is likely to result in the destruction or adverse modification of designated critical habitat of such species in violation of the Endangered Species Act of 1973, as amended (16 USC 1531, et seq.), or which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs, as a result of the mining operation. The operator shall promptly report to the department and the U.S. fish and wildlife service the presence in the permit area of any listed threatened or endangered species or critical habitat thereof, any plant or animal listed as threatened or endangered by Montana, or any bald or golden eagle roost site, seasonal concentration area, or breeding territory of which the operator becomes aware and which was not previously reported to the department. Upon notification, the department shall consult with appropriate state and federal fish and

wildlife agencies and shall thereafter identify whether and under what conditions the operator may proceed~~;~~. The U.S. fish and wildlife service's threatened and endangered species-specific protective measures must be implemented when so determined by the department in consultation with the U.S. fish and wildlife service.

(2) In addition to the requirements of 82-4-231(10)(j), MCA, the operator shall:

(a) ensure that the design and construction of electric powerlines and other transmission facilities used for or incidental to the strip or underground mining operations on the permit area are adequate to minimize collisions and electrocutions of raptors, waterfowl, and other wildlife species. All powerlines must be constructed ~~and are~~ in accordance with ~~the guidelines set forth in environmental criteria for electric transmission systems (USDI, USDA (1970)), in Raptor Research Report No. 4 (1981),~~ "Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996 (Avian Power Line Interaction Committee, 1996)", which is incorporated by reference into this rule, or ~~in~~ alternative guidance manuals approved by the department. ~~Distribution lines must be designed and constructed in accordance with REA Bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds, or in alternative guidance manuals approved by the department.~~ For informational purposes, ~~these 2~~ this document~~s are~~ is on file at the Helena office of the department;

(b) remains the same.

(c) ~~fence roadways where specified by the department to guide locally important wildlife to roadway underpasses. No new barrier may be created in known and important wildlife migration routes unless otherwise approved by the department~~ design and construct fences, overland conveyers, and other potential structures to permit passage of large mammals, except where the department determines that such requirements are unnecessary;

(d) remains the same.

(e) consult with appropriate state and federal fish and wildlife and land management agencies to ensure that reclamation will provide for habitat needs of various wildlife species in ~~an equal or greater capacity than was provided prior to mining~~ accordance with the approved postmining land use. Pursuant to 82-4-231(10)(j) and 82-4-232(9), MCA, ~~Special~~ special attention must be given to inanimate elements such as rock outcrops, boulders, rubble, dead trees, etc., that may have existed on the surface prior to mining, and to plant species with proven nutritional and cover value for fish and wildlife. Plant groupings and water sources must be distributed to fulfill the requirements of fish and wildlife~~, and vegetative cover may not be less than that required by the approved postmining land use~~;

(f) restore, consistent with 82-4-231(10)(j), 82-4-232(9), and 82-4-233, MCA, or avoid disturbance to wetlands, riparian vegetation along rivers and streams and bordering ponds and lakes, and other habitats of unusually high value for fish and wildlife, and, where practicable, enhance such habitats; and

~~(g) restore, consistent with 82-4-233, MCA, and in~~

~~compliance with ARM 17.24.702, 17.24.703, 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.721, 17.24.723 through 17.24.726, 17.24.728, and 17.24.730 through 17.24.733, or avoid disturbance to natural riparian vegetation on the banks of streams, lakes, ponds, and other wetland areas and, where practicable, enhance such habitats;~~

~~(h)~~ (g) afford protection to aquatic communities by avoiding stream channels (see ARM 17.24.651) or by restoring stream channels as required in ARM 17.24.634~~;~~.

~~(i) not use pesticides on the area during strip or underground mining and reclamation operations unless approved by the department; and~~

~~(j) to the extent possible prevent, control, and suppress range, forest, and coal fires which are not approved by the department as part of a management plan.~~

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

REASON: The proposed amendment to (1) modifies the rule to provide that only significant observations of bald or golden eagles (roost sites, seasonal concentration areas or breeding territories) need to be reported. Currently (1) requires the reporting of incidental observations, such as during migrations. Reporting of incidental observations is not necessary because the mining operation is unlikely to cause any adverse impacts to bald or golden eagles that are merely flying over the area. The proposed amendment also adds the requirement that an operator implement U.S. Fish and Wildlife Service's species-specific protective measures as needed. U.S. Fish and Wildlife Service and the Office of Surface Mining have entered into a memorandum of understanding for the implementation of the species-specific protective measures, requiring all coal mining companies to include the measures in their mine permits. The Department will require implementation of protective measures, as needed, with this rule in order to provide effective protection for threatened and endangered species.

The proposed amendment to (2)(a) updates construction requirements for powerlines to the most recent standards. These standards contain updated configurations for powerlines to minimize adverse impacts on raptors.

The proposed amendment to (2)(c) deletes a provision requiring the fencing of roadways to exclude wildlife passage or to direct wildlife to roadway underpasses because it has proven, in practice, to be unnecessary. In the Department's experience, mines have not created unacceptable barriers to wildlife passage and, therefore, the Department has not applied these provisions in the 25 years that they have been in effect. The proposed amendment also adds a provision requiring that fences, conveyors and other structures be designed and constructed to allow freedom throughout the minesite for large animals. By specifying large mammals in this provision, other wildlife will also be provided for.

The proposed amendment to (2)(e) reflects the enactment of

HB 373 by the 2003 Legislature that replaced the general rule that the disturbed area would include reclamation for wildlife and wildlife habitat with less restricted options to reclaim for a variety of postmining land uses such as cropland and pastureland. The second proposed amendment adds reference to 82-4-231(10)(j) and 82-4-232(9), MCA, to clarify that, even with the reduced emphasis on wildlife and wildlife habitat, wildlife habitat enhancement features must still be incorporated as necessary and appropriate. Finally, the proposed amendment deletes a provision that is redundant to ARM 17.24.726.

The proposed amendment to (2)(f) consolidates the provisions that currently are included in (2)(f) and (g) to eliminate unnecessary language. The proposed amendment also substitutes a more complete reference to applicable statutory provisions than the previous reference.

The deletion of (2)(g) is proposed because its provisions have been incorporated into proposed subsection (f).

The proposed deletion of (2)(i) is necessary because use of pesticides is controlled by the department of agriculture.

Section (2)(j) is proposed for deletion because it is unnecessary. Control of range, forest, and coal fires are considered to be management practices that are the responsibility of the operators. The Department still has ultimate authority over the acceptability of the results of reclamation efforts. Therefore, (j) is unnecessary. However, if coal fires become large or extensive at a given mine, the situation may trigger coal conservation or air quality issues.

17.24.761 AIR RESOURCES PROTECTION (1) Each operator shall ~~plan and~~ employ ~~department-approved~~ fugitive dust control measures as an integral part of site preparation, coal mining and reclamation operations in accordance with 82-4-231(10)(m), MCA, the operator's air quality permit, and~~. The department shall approve the control measures appropriate for use in planning, according to~~ applicable federal and state air quality standards~~, climate, existing air quality in the area affected by mining, and the available control technology~~.

~~(2) The fugitive dust control measures to be used, depending on applicable federal and state air quality standards, climate, existing air quality, size of the operation, and type of operation, must include, as necessary, but not be limited to:~~

~~(a) periodic watering of unpaved roads, with the minimum frequency of watering approved by the department;~~

~~(b) chemical stabilization of unpaved roads with proper application of nontoxic soil cement or dust suppressants;~~

~~(c) paving of roads;~~

~~(d) prompt removal of coal, rock, soil and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface;~~

~~(e) restricting the speed of vehicles to reduce fugitive dust caused by travel;~~

~~(f) revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are sources of fugitive dust;~~

~~(g) restricting the travel of unauthorized vehicles on other than established roads;~~

~~(h) enclosing, covering, watering, or otherwise treating loaded haul trucks, and railroad cars to reduce loss of material to wind and spillage;~~

~~(i) substituting of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subjected to wind erosion;~~

~~(j) minimizing the area of disturbed land;~~

~~(k) prompt revegetation of regraded lands;~~

~~(l) use of alternatives for coal-handling methods, restriction of dumping procedures, wetting of disturbed materials during handling, and compaction of disturbed areas;~~

~~(m) planting of special windbreak vegetation at critical points in the permit area;~~

~~(n) control of dust from drilling, using water sprays, hoods, dust collectors, or other controls;~~

~~(o) restricting the areas to be blasted at any 1 time to reduce fugitive dust;~~

~~(p) restricting activities causing fugitive dust during periods of air stagnation;~~

~~(q) extinguishing any areas of burning or smoldering coal and periodically inspecting for burning areas whenever the potential for spontaneous combustion is high;~~

~~(r) reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization;~~

~~(s) restricting fugitive dust at spoil and coal transfer and loading points with water sprays, negative pressure systems and baghouse filters, chemicals, or other practices; and~~

~~(t) covering coal storage and coal crushing facilities.~~

~~(3) Whenever it determines that application of fugitive dust control measures listed in (2) of this rule is inadequate, the department may require additional measures and practices as necessary.~~

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

AUTH: 82-4-204, MCA
IMP: 82-4-231, MCA

REASON: The proposed amendment to (1) and deletion of (2) and (3) eliminate specific air quality protection requirements because primary responsibility for the protection of air resources is through the issuance of an air quality permit under the Clean Air Act of Montana, not the strip mine operating permit. It is not necessary to include these requirements in the coal rules because they are addressed in the air quality permitting process administered by the Department.

17.24.762 POSTMINING LAND USE (1) The postmining land use must ~~be grazing land for livestock and wildlife, fish and wildlife habitat, or both, as outlined in 82-4-233(1), MCA, unless alternate reclamation is approved under ARM 17.24.823 and, as appropriate, ARM 17.24.824.~~ satisfy 82-4-203(28) and 82-

4-232(7), MCA. In applying 82-4-232(7), MCA, the following principles apply:

(a) The premining uses of the land to which the postmining land use is compared are those that the land previously supported or could have supported if the land had not been mined and had been properly managed.

(b) The postmining land use for land that has been previously mined and not reclaimed must be judged on the basis of the land use that existed prior to any mining. If the land cannot be reclaimed to the use that existed prior to any mining because of the previously mined condition, the postmining land use must be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.

(c) The postmining land use for land that has received improper management must be judged on the basis of the premining use of surrounding lands that have received proper management.

(d) If the premining use of the land was changed within five years of the beginning of mining, the comparison of postmining use to premining use must include a comparison with the use of the land prior to the change as well as its uses immediately preceding mining.

(2) Alternative postmining land uses may be proposed and must be determined in accordance with 82-4-232(7) and (8), MCA, and ARM 17.24.821 and 17.24.823.

(3) Certain premining facilities may be replaced pursuant to 82-4-232(10), MCA.

AUTH: 82-4-204, 82-4-232, MCA
IMP: 82-4-233, MCA

REASON: The proposed amendment to (1) reflects the 2003 Legislature's enactment of HB 373. Previously, coal disturbances could only be reclaimed to the postmining land uses of livestock grazing and wildlife habitat unless the applicant submitted and the department approved an "alternate reclamation" plan. Under HB 373, lands disturbed by coal mining are to be reclaimed to the premine use or to higher or better uses that are considered "alternative postmining land uses." The proposed amendment adds reference to 82-4-203(28) and 82-4-232(7), MCA, the statutory provision reflecting the new reclamation standards of HB 373.

The proposed addition of (1)(a) through (d) incorporate provisions that are necessary, in some instances, to determine the premining land use and in comparing the alternative postmining land use with the premining land use. These provisions were previously set forth in ARM 17.24.824, a rule addressing alternate reclamation that is proposed for repeal. In promulgating ARM 17.24.824, the department relied on federal regulations that actually applied to "alternative postmining land uses." Thus, it is appropriate to transfer these provisions from ARM 17.24.824 to 17.24.762 because they are still relevant and required by federal regulations. See 30 CFR 816.133 and 817.133.

Proposed new (2) adds a reference to the statutory

provisions regarding alternative postmining land uses that were enacted in HB 373 by the 2003 Legislature and to the rules implementing those statutory provisions as amended in this rule notice.

Proposed new (3) adds a reference to a statutory provision allowing the replacement of facilities that was enacted in HB 373 by the 2003 Legislature.

17.24.815 PRIME FARMLAND~~S~~: REVEGETATION (1) Each operator who conducts strip or underground mining operations on prime farmland~~s~~ shall, within the area identified as prime farmland before disturbance:

(a) if the approved postmining land use is not cropland:

~~(a)~~ (i) randomly establish test plots that will be cropped until restoration of the premining productivity has met the requirements of this rule. The remainder of the area not used for test plots must be revegetated consistent with the standards of ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, ~~17.24.728, and 17.24.730 through 17.24.733~~ and 17.24.731 and with the approved postmining land use. When restoration of the premining productivity has been demonstrated, the operator shall revegetate the test plots consistent with the standards of ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, ~~17.24.728, and 17.24.730 through 17.24.733~~ and 17.24.731 and with the approved postmining land use; or

~~(b)~~ (ii) crop the entire area of disturbed prime farmland until restoration of the premining productivity is demonstrated. The operator shall then~~:~~

~~(i)~~ revegetate the entire area consistent~~ly~~ with ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, ~~17.24.728, and 17.24.730 through 17.24.733~~ and 17.24.731 and with the approved postmining land use; or

~~(ii)~~ (b) if the approved postmining land use is cropland, permanently reclaim the area to cropland ~~if application is made and approval is granted under the provisions of ARM 17.24.821, and 17.24.823 through 17.24.825~~.

(2) All prime farmlands reclaimed either temporarily or permanently as cropland must meet the following revegetation requirements:

(a) through (d) remain the same.

(e)(i) revegetation success on prime farmland~~s~~ must be determined upon the basis of a comparison of actual crop production on the disturbed area and the crop production on reference areas meeting the following requirements:

(A) reference areas must consist of representative undisturbed prime farmland supporting the crops commonly grown on those prime farmland~~s~~ proposed for disturbance;

(B) remains the same.

(C) the location of reference areas and the yields from them that are used to determine revegetation success pursuant to (2)(e)(i) ~~above~~ must be determined with the concurrence of the

Montana state office of the U.S. natural resources conservation service.

(ii) through (h) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-227, 82-4-232, MCA

REASON: "Farmlands" is changed to "farmland" throughout the rule for consistency. The proposed addition of (1)(a) reflects the 2003 Legislature's enactment of HB 373. In HB 373, the Legislature replaced the concept of "alternate reclamation," which was unique to the Montana program, with "alternative postmining land use" which parallels federal regulations under the federal Surface Mining Control and Reclamation Act of 1977. The added provision addresses the reclamation of prime farmlands in this new context.

The proposed amendment to the current (1)(a) simplifies the reference to applicable rules and reflects changes in those rules. The proposed amendment also adds language regarding the approved postmining land use to be consistent with the 2003 Legislature's enactment of HB 373.

The proposed amendment consolidates the provisions of (1)(b) and (b)(i) into the new (1)(a)(ii) for clarity, simplifies the reference to applicable rules and reflects changes in those rules, and adds language regarding the approved postmining land use to be consistent with the 2003 Legislature's enactment of HB 373.

The proposed amendment to new (1)(b) deletes reference to ARM 17.24.821, 17.24.823 through 17.24.825. These rules address "alternate reclamation" and are no longer applicable to prime farmland reclamation given the 2003 Legislature's enactment of HB 373. Proposed revisions to ARM 17.24.821 and 17.24.823 might still be applicable to unusual prime farmland situations if they were to involve reclamation to alternative land uses. However, the applicability of these rules would become apparent in the normal course of review of a permit application and require no particular reference here. The proposed amendment also adds language regarding the approved postmining land use to be consistent with the 2003 Legislature's enactment of HB 373.

The proposed amendment to (2)(e)(i)(C) provides a more complete citation.

17.24.821 ~~ALTERNATE RECLAMATION~~ ALTERNATIVE POSTMINING LAND USES: SUBMISSION OF PLAN (1) ~~Each~~ An operator ~~who desires to conduct alternate reclamation~~ may propose to the department a plan for a higher or better use as an alternative postmining land use pursuant to 82-4-232(7) and (8), MCA~~, shall submit his plan to the department~~. With appropriate maps, narrative, and other materials, the ~~The~~ plan must ~~contain appropriate descriptions, maps and plans that show~~:

(a) describe the nature of the ~~alternate reclamation~~ alternative postmining land use;

(b) ~~how use of the alternate reclamation allows a postmining land use which is consistent with the purposes of the Act~~ address all of the criteria in 82-4-232(8) and (9), MCA; and

(c) ~~why the results are not attainable by use of nonalternate reclamation methods~~ address the applicable requirements of ARM 17.24.823(1)~~;~~.

~~(d) that the alternate reclamation:~~

~~(i) is at least as environmentally protective, during and after the proposed strip or underground mining operations, as nonalternate reclamation methods; and~~

~~(ii) will not reduce the protection afforded public health and safety below that provided by nonalternate reclamation methods;~~

~~(e) that the applicant shall conduct appropriate special monitoring, as required by the department, with respect to the alternate reclamation during the bonding period; this monitoring must be designed:~~

~~(i) to identify, as soon as possible, potential risks to the environment and public health and safety from use of the alternate reclamation; and~~

~~(ii) to evaluate the effectiveness of the alternate reclamation;~~

~~(f) the reclamation methods which will be implemented in the event the objective of the alternate reclamation plan is not attained; and~~

~~(g) for areas proposed for alternate revegetation, the area(s) of undisturbed land, or technical standards derived from historical data as applicable in ARM 17.24.724(5), or target yields in the case of prime farmland as prescribed in ARM 17.24.815(2)(e), to which the mined and reclaimed land will be compared and that will be used for bond release purposes.~~

(2) Each application for ~~alternate reclamation~~ alternative postmining land use is subject to public review requirements of subchapter 4 either as part of a new application or as an application for a major revision. However, in its notice of application to government entities pursuant to ARM 17.24.401, the department shall allow 60 days for submission of comments from authorities having jurisdiction over land use policies and plans, and from appropriate state and federal fish and wildlife agencies pursuant to ARM 17.24.824(1)(f).

AUTH: 82-4-204, ~~82-4-205,~~ 82-4-232, MCA
IMP: 82-4-233, MCA

REASON: The proposed amendments to (1)(a) through (g) reflect the 2003 Legislature's enactment of HB 373, substituting "alternative postmining land use" for "alternate reclamation" in (1) and (1)(a), adding a reference in (1)(b) to statutory criteria for alternative postmining land uses passed by the 2003 Legislature, adding a reference in (1)(c) to criteria for alternative postmining land uses set forth in ARM 17.24.823 as proposed in this rule notice, and deleting (d) through (g) that address alternate reclamation.

The proposed amendment to (2) reflects the 2003

Legislature's enactment of HB 373 by substituting "alternative postmining land use" for "alternate reclamation." The proposed amendment to (2) also facilitates the involvement of other regulatory agencies required under ARM 17.24.823(1)(b)(i) and (g) by incorporating the notice and comment provisions previously applicable to alternate reclamation and set forth in ARM 17.24.824(4)(a)(i) and (g). Other regulatory agencies currently have 60 days to submit comments regarding alternate reclamation under ARM 17.24.824(4)(a)(i). The proposed amendment retains this comment period in the context of alternative postmining land use.

17.24.823 ~~ALTERNATE RECLAMATION~~ ALTERNATIVE POSTMINING LAND USES: APPROVAL OF PLAN ~~AND REVIEW OF OPERATION~~ (1) ~~No permit or permit revision authorizing alternate reclamation shall be issued unless the department first finds, in writing, on the basis of a complete application and with the concurrence of the federal coal regulatory authority that~~ The department may approve a proposed alternative postmining land use if all of the following criteria are met:

(a) ~~the plan meets~~ the requirements of ~~ARM 17.24.821~~ 82-4-232(8) and (9), MCA;

(b) ~~the plan is based on a clearly defined set of objectives which can reasonably be expected to be achieved~~ the proposed postmining land use is compatible, where applicable, with existing local, state or federal land use policies or plans relating to the permit area. Demonstration of compatibility with land use policies and plans must include, but is not limited to:

(i) written statement of the authorities with statutory responsibilities for land use policies and plans submitted pursuant to ARM 17.24.821(2); and

(ii) as applicable, obtaining any required approval, including any necessary zoning or other changes required for land use by local, state or federal land management agencies. This approval must remain valid throughout the strip or underground mining operations;

(c) ~~the permit contains conditions that specifically~~ specific plans are submitted to the department that show the feasibility of the postmining land use as related to projected land use trends and markets and that include a schedule showing how the proposed use will be financed, developed, and achieved within a reasonable time after mining and how it will be sustained. These plans must be supported, if appropriate, by letters of commitment from parties other than the operator~~:~~ ;

~~(i) limit the alternate reclamation authorized to that granted by the department;~~

~~(ii) impose enforceable environmental protection standards; and~~

~~(iii) require the permittee to conduct the periodic monitoring and reporting program set forth in the plan, if required.~~

(d) as applicable, provision of any necessary public facilities is ensured as evidenced by letters of commitment from

parties other than the operator as appropriate, to provide the public facilities in a manner compatible with the plans submitted;

(e) plans for the postmining land use are designed under the general supervision of a licensed professional engineer, or other appropriate professional, to ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, and aesthetic design appropriate for the postmining use of the site;

(f) the use will not involve unreasonable delays in reclamation; and

(g) appropriate measures submitted by state and federal fish and wildlife management agencies to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants have been incorporated into the plan.

~~(2) The department shall consult with the Montana state office of the US natural resources conservation service before approving alternate reclamation plans or revisions involving prime farmlands.~~

~~(3) After the permit review required in ARM 17.24.414 and consultation with the federal coal regulatory authority, the department shall require by order, supported by written findings, any reasonable revision or modification of the alternate reclamation provisions necessary to ensure that the operations involved are conducted to fully protect the environment and public health and safety. Any person who is or reasonably may be adversely affected by the order must be provided with an opportunity for an informal conference.~~

AUTH 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-232, MCA

REASON: The proposed amendment to (1) reflects the 2003 Legislature's enactment of HB 373, substituting "alternative postmining land use" for "alternate reclamation."

The proposed amendment to (1)(a) cites approval criteria for alternative postmining land uses enacted by the 2003 Legislature in HB 373 and deletes extraneous language.

The proposed amendment to (1)(b) deletes criteria that is redundant to 82-4-232(8)(a)(i), MCA. The proposed amendment also states in greater detail the requirement that alternative postmining land uses be consistent with applicable land use policies or plans set forth in 82-4-232(8)(a)(iii)(B), MCA. Finally, the proposed addition of (1)(b)(i) and (ii) is necessary to describe the documentation by the Department to determine whether an alternative postmining land use is consistent with applicable land use policies. Requiring this documentation is consistent with 30 CFR 816.133(d)(10) requiring review and comment by federal, state and local government agencies with an interest in the proposed land use.

The proposed amendments to (1)(c) and addition of (1)(d) implement 82-4-232(8)(a)(i), MCA, allowing the approval of an alternative postmining land use only if there is a reasonable

likelihood for achievement of the alternative land use.

The proposed addition of (1)(e) is necessary to implement 82-4-232(8)(a)(i), MCA, allowing the approval of an alternative postmining land use only if there is a reasonable likelihood for achievement of the alternative land use. This provision is consistent with 30 CFR 816.133(d)(1).

New (1)(f) is necessary to implement 82-4-232(8)(a)(iii)(C), MCA, allowing the approval of an alternative postmining land use only if it does not involve unreasonable delay in implementation.

The proposed addition of (1)(g) is necessary to implement 82-4-232(9), MCA, requiring a reclamation plan to incorporate appropriate wildlife habitat enhancement features and 82-4-232(8)(a)(iii)(D), MCA, allowing the approval of an alternative postmining land use only if it does not cause or contribute to violation of federal, state, or local law. The provision is consistent with 30 CFR 816.133(d)(10) requiring review and comment by federal, state and local government agencies with an interest in the proposed land use.

The proposed deletion of (2) is necessary because the provisions for consultation with the U.S. Natural Resources Conservation Service are set forth in ARM 17.24.324 and 17.24.815(2)(e)(i)(c).

The Board is proposing to delete (3), a provision requiring consultation with the Office of Surface Mining that was specifically developed because the state provisions allowing "alternate reclamation" did not parallel federal regulations. Enactment of HB 373 conformed Montana law with federal alternative postmining land use regulations, rendering consultation with the Office of Surface Mining unnecessary.

17.24.832 AUGER MINING: SPECIFIC PERFORMANCE STANDARDS

(1) through (3) remain the same.

(4) If the operation involves stripping for the purpose of auguring, ~~the auguring must follow the stripping by not more than 60 days. Final grading and backfilling must follow the auguring by not more than 15 days, but in no instance may an area be left ungraded more than 1,500 feet behind the auguring. The department may grant variances if the operator demonstrates that more time is needed, based on the sequence of the operation~~ the requirements of ARM 17.24.501(6)(c) for the purpose of backfilling and grading must be followed.

(5) In order to prevent pollution of surface and ground water and to reduce fire hazards, each auger hole, except as provided in (6) ~~of this rule~~, must be plugged to prevent the discharge of water from the hole and access of air to the coal, as follows:

(a) each auger hole discharging water containing toxic-forming or acid-forming material must be plugged within 72 hours after completion by backfilling and compacting noncombustible and impervious material into the hole to a depth sufficient to form a water-tight seal, if possible. If sealing within 72 hours is not possible, the discharge must be treated commencing within 72 hours after completion to meet applicable effluent

limitations and water quality standards under ARM 17.24.633 until the hole is properly sealed; ~~and~~

(b) each auger hole discharging water not containing acid- or toxic-forming materials must be sealed with an impervious noncombustible material, as contemporaneously as practicable with the augering operation, as approved by the department; and

~~(b)~~ (c) each auger hole not discharging water must be sealed as in (5)(a) ~~above~~ to close the opening ~~within 30 days following completion~~ as contemporaneously as practicable with the augering operation.

(6) through (7)(d) remain the same.

AUTH: 82-4-204, MCA
IMP: 82-4-231, 82-4-232, 82-4-233, MCA

REASON: The proposed amendment to (4) deletes a time and distance standard for reclamation that is unrealistically restrictive and adds a provision allowing a site-specific determination of applicable requirements for any proposed auger mining by referencing ARM 17.24.501(6)(c).

The proposed addition of (5)(b) is necessary for completeness. All auger holes need to be sealed to prevent possible combustion of the coal seam and for safety. Currently, the rule requires the sealing of auger holes discharging toxic-forming or acid-forming material and auger holes not discharging water; there is no provision for auger holes discharging non-acid or non-toxic water.

The proposed amendment to (5)(c) provides a more flexible requirement for sealing auger holes. The current 30-day period is unnecessary because no, or very minimal, environmental impacts result from leaving dry holes open.

17.24.901 GENERAL APPLICATION AND REVIEW REQUIREMENTS

(1) In addition to appropriate material required under subchapter 3, any plan for underground mining must include the following:

(a) and (b) remain the same.

(c)(i) a complete subsidence control plan for the proposed operation which must include:

(A) through (F) remain the same.

(G) of the structures and domestic water supplies identified in (1)(c)~~(vi) above~~ (i)(F) (the structure survey requirements of ARM 17.24.911(4) notwithstanding), a survey of the condition of all non-commercial buildings or occupied residential dwellings and structures related thereto, and a determination, in accordance with ARM 17.24.304~~(5)~~(1)(e) and ~~(6)~~(1)(f), of the quality and quantity of all domestic water supplies.

(I) through (2) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-222, MCA

REASON: The proposed amendment to (1)(c)(i)(G) corrects an

erroneous reference.

17.24.903 GENERAL PERFORMANCE STANDARDS (1) through (1)(j) remain the same.

(2) Adversely affected water supplies must be replaced in accordance with 82-4-243 and 82-4-253, MCA, and ARM 17.24.648.

AUTH: 82-4-204, MCA
IMP: 82-4-227, 82-4-231, 82-4-232, 82-4-233, 82-4-243, 82-4-253, MCA

REASON: The proposed amendment to (2) addresses a concern raised by the Office of Surface Mining in 68 Fed. Reg. 151, 46472 (2003) (to be codified at 30 CFR 926). Currently, ARM 17.24.911(7)(d) requires the replacement of any adversely affected domestic water supply. Because this provision is set forth in a rule addressing subsidence control, the Office of Surface Mining was concerned that the provision limited water replacement for underground mines to instances where subsidence has occurred. Moving the provision requiring replacement of adversely affected domestic water supplies from ARM 17.24.911(7)(d) to ARM 17.24.903, which contains general performance standards, cures the deficiency identified by the Office of Surface Mining. Replacement of water supplies affected by mining generally is provided for in 82-4-253(3), MCA.

17.24.911 SUBSIDENCE CONTROL (1) through (6)(d) remain the same.

(7) An operator who conducts underground mining which results in subsidence that causes material damage or reduces the value or reasonably foreseeable use of the surface lands shall, in accordance with 82-4-243, MCA, and with respect to each surface area affected by subsidence:

(a) and (b) remain the same.

(c) compensate the owner of any surface structure in the full amount of the diminution in value resulting from subsidence, by purchasing, prior to mining, a noncancellable, premium-prepaid insurance policy or other means approved by the department, thereby assuring before mining begins that payment will occur; indemnify every person with an interest in the surface for all damages suffered as a result of the subsidence; and, to the extent technologically and economically feasible, fully restore the land to a condition capable of maintaining reasonably foreseeable uses which it could support before subsidence~~; and~~.

~~(d) replace any adversely affected domestic water supply.~~

(8) through (10) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ 82-4-231, MCA
IMP: 82-4-227, 82-4-231, 82-4-243, MCA

REASON: The proposed deletion of (7)(d) is in response to comments made by the Office of Surface Mining in 68 Fed. Reg.

151, 46472 (2003) (to be codified at 30 CFR 926). The Office of Surface Mining stated that (7)(d) was too narrow in scope because it required replacement of water supplies adversely affected only by subsidence. As stated above, ARM 17.24.903(2) has been amended to require replacement of all water supplies adversely affected by a permittee's operation to cure this deficiency.

17.24.924 DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: GENERAL REQUIREMENTS (1) through (3)(e) remain the same.

(4)(a) Each waste disposal structure must be designed using current prudent design standards, certified by a ~~registered~~ licensed professional engineer experienced in the design of similar earth and waste structures, and approved by the department.

(b) through (8) remain the same.

(9) Following final grading of the waste disposal structure, the waste must be covered with a minimum of ~~4~~ four feet of the best available non-toxic and non-combustible material, in a manner that does not impede drainage from the underdrains, unless the applicant demonstrates and the department finds that a lesser depth will provide for revegetation consistent with ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, ~~17.24.728, and 17.24.730 through 17.24.733~~ and 17.24.731. Toxic, acid-forming, and other deleterious waste must be handled and covered in accordance with ARM 17.24.501(2) and 17.24.505(2).

(10) through (17) remain the same.

(18)(a) A qualified ~~registered~~ licensed professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect each structure during construction. The professional engineer or specialist must be experienced in the construction of earth and waste structures.

(b) through (c) remain the same.

(d) The qualified ~~registered~~ licensed professional engineer shall provide a certified report to the department within ~~7~~ seven working days after each inspection that the structure has been constructed and maintained as designed and in accordance with the approved plan and this subchapter. The report must include appearances of instability, structural weakness, and other hazardous conditions.

(e) through (20) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ 82-4-231~~(10)(h)~~, MCA
IMP: 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

REASON: The proposed amendments to (4)(a) and (18)(a) and (d) change the phrase "registered professional engineer" to "licensed professional engineer" to conform with Montana Board of Professional Engineers and Land Surveyors terminology.

17.24.927 DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: DURABLE ROCK FILLS (1) The department may approve disposal of underground development waste in a durable rock fill on a site-specific basis, provided the method of construction is certified by a ~~registered~~ licensed professional engineer experienced in the design of earth and rockfill embankments and provided the requirements of ARM 17.24.924 and this rule are met. Underground development waste is eligible for disposal in durable rock fills if it is rock material consisting of at least 80% by volume of sandstone, limestone, or other rocks that do not slake in water and that are non-acid, non-toxic, non-acid-forming and non-toxic-forming. Resistance of the waste to slaking must be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the department. Underground development waste must be transported and placed in a specified and controlled manner that will ensure stability of the fill.

(a) and (b) remain the same.

(2) A qualified ~~registered~~ licensed professional engineer shall conduct stability analyses in accordance with ARM 17.24.920 and shall certify that the design of the durable rock fill will ensure the stability of the fill and meet all other applicable requirements.

(a) through (7) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ 82-4-231~~(10)(h)~~, MCA
IMP: 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

REASON: See Reason for ARM 17.24.924.

17.24.930 PLACEMENT AND DISPOSAL OF COAL PROCESSING WASTE: SPECIAL APPLICATION REQUIREMENTS (1) remains the same.

(2) Each application must contain a general plan and detailed design plan for each coal processing waste disposal area and structure proposed within the permit area.

(a) remains the same.

(i) be prepared by, or under the direction of and certified by a qualified ~~registered~~ licensed professional engineer experienced in the construction of earth and rock fill embankments;

(ii) through (3)(d)(ii) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ 82-4-231, MCA
IMP: 82-4-222, MCA

REASON: See Reason for ARM 17.24.924.

17.24.932 DISPOSAL OF COAL PROCESSING WASTE (1) through (4)(b) remain the same.

(5)(a) All coal processing waste disposal areas must be inspected, on behalf of the operator, by a qualified and ~~registered~~ licensed professional engineer, in accordance with ARM 17.24.924 and the additional requirements of this section.

(b) through (10) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ 82-4-231~~(10)(h)~~, MCA
IMP: 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

REASON: See Reason for ARM 17.24.924.

17.24.1001 PERMIT REQUIREMENT (1) A person who intends to prospect for coal or uranium on land not included in a valid strip or underground mining permit must obtain a prospecting permit from the department if the prospecting will be:

(a) ~~be~~ conducted to determine the location, quality or quantity of a mineral deposit and will substantially disturb, as defined in ARM 17.24.301, the natural land surface; or

(b) ~~will be~~ conducted on an area designated unsuitable for strip or underground coal mining pursuant to 82-4-227 or 82-4-228, MCA, or ARM 17.24.1131.

(2) An application for a prospecting permit must be made on forms provided by the department and must be accompanied by the following information:

(a) and (b) remain the same.

(c) identification of any historical, archaeological, and ethnological values in the area to be affected to the same extent required for a permit application by ARM 17.24.304~~(2)~~(1)(b) and possible mitigating measures to be exercised should any of those values be encountered;

(d) for any lands protected under 82-4-227(13), MCA, or ARM 17.24.1131, a demonstration that, to the extent technologically and economically feasible, the proposed prospecting activities will minimize interference with the values for which those lands were designated. The application must include documentation of consultation with the owner of the feature causing the land to come under the designation, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to be so designated;

(d) through (m) remain the same, but are renumbered (e) through (n).

~~(n)~~ (o) the measures to be taken to comply with the performance standards of this subchapter; ~~and~~

~~(o)~~ (p) the proposed postdisturbance land use~~.~~; and

(q) the proposed public notice of the prospecting activities and proof of publication, in accordance with ARM 17.24.303(23). The procedures of ARM 17.24.401(3) and (5), 17.24.402, and 17.24.403 must be followed in the processing of a prospecting permit application.

(3) through (5) remain the same.

(6) The department may not approve a prospecting permit application unless the application affirmatively demonstrates and the department finds in writing, on the basis of information set forth in the application or information otherwise available that is compiled by the department, that:

(a) the application is complete and accurate and that the prospecting and reclamation will be conducted in accordance with all applicable requirements of this subchapter;

(b) the proposed prospecting operation will not jeopardize the continued existence of endangered or threatened species or result in destruction or adverse modifications of their critical habitats;

(c) the application complies with applicable federal and state cultural resource requirements, including ARM 17.24.318, 17.24.1131 and 17.24.1137; and

(d) the proposed prospecting activities will meet the requirements of (2)(d) and that the owner of the feature causing any land to come under a protected designation, pursuant to 82-4-227(13), MCA, or ARM 17.24.1131, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to be so designated, have been provided the opportunity to comment on the department's finding on this matter.

(7) Prospecting related activities or facilities that are conducted or created in accordance with this rule and ARM 17.24.1002 through 17.24.1014 and 17.24.1016 through 17.24.1018 must be transferred to a valid strip or underground mining permit whenever such activities or facilities become part of mine operations in conjunction with ARM 17.24.308(2) or 17.24.609.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-226, MCA

REASON: The proposed amendment to (1)(a) and (b) corrects a grammatical error. The proposed amendment to (1)(b) also adds a reference to ARM 17.24.1131 so that the list of areas designated as unsuitable for strip or underground coal mining is complete.

The proposed amendments to (2)(d) maintain consistency with federal requirements. By letter dated April 2, 2001, the Office of Surface Mining notified the Department of changes in the application requirements for coal exploration set forth in 30 CFR 772.12(b)(14).

The proposed addition of (2)(q) conforms the permit issuance procedures for coal prospecting permits with federal requirements as required by the Office of Surface Mining in 30 CFR 926, Vol. 64, No. 14, January 22, 1999. See 30 CFR 772.12(c).

The proposed addition of (6) is necessary to maintain consistency with federal requirements. By letter dated April 2, 2001, the Office of Surface Mining notified the Department of changes in new approval requirements set forth in 30 CFR 772.12(d)(2)(iv).

The proposed addition of (7) accommodates the administration of prospecting-related activities and facilities under a mining permit. It is more efficient to include all activities and facilities related to mining under the mining permit, including those activities and facilities that were originally permitted under prospecting or notice of intent provisions. Transferring areas permitted under prospecting to a mining permit is allowed under 82-4-226(5), MCA.

17.24.1002 INFORMATION AND MONTHLY REPORTS (1) remains the same.

(2) A monthly report must be submitted for each successive 30 day period no later than the 15th of the following month, provided, however, that monthly reports need not be submitted for 30 day periods of inactivity. Reports must include, but are not limited to, the following information:

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

(j) description of any activity that substantially disturbs land or water resources pursuant to ARM 17.24.301~~(117)~~(120);

(k) through (3) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-226, MCA

REASON: This rule is being amended to correct an internal reference cite because of amendments being made in this rulemaking procedure to the rule cross-referenced.

17.24.1003 RENEWAL AND TRANSFER OF PERMITS (1) through (4) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-226, MCA

REASON: The proposed addition of the words "AND TRANSFER" to the title is for accuracy regarding the content of this rule.

17.24.1017 BOND RELEASE PROCEDURES FOR DRILLING OPERATIONS

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

(ii) backfilling and grading, pursuant to the approved plan, is completed;

(b) remains the same.

(i) expiration of the responsibility period of ARM 17.24.1016(4) and the remaining requirements of this subchapter have been met~~,~~; or

(ii) through (7) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-226, 82-4-232, 82-4-235, MCA

REASON: The proposed amendments to (1) correct grammatical errors.

17.24.1018 NOTICE OF INTENT TO PROSPECT (1) This rule applies to a prospecting operation that is~~:~~

~~(a)~~ outside an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228, MCA, and

~~(b)~~ that is:

~~(i) not conducted for the purpose of determining the location, quality or quantity of a natural mineral deposit; or~~

(a) conducted for the purpose of gathering environmental data to establish the conditions of an area before beginning strip or underground mining; or

~~(ii)~~ (b) conducted for the purpose of determining the location, quality, or quantity of a natural mineral deposit but does not substantially disturb, as defined in ARM 17.24.301, the natural land surface.

(2) through (4) remain the same.

(5) A notice of intent for prospecting activities that will not substantially disturb, as defined in ARM 17.24.301, the natural land surface must contain the following:

(a) information required in ARM 17.24.1001(2)(a) through ~~(h)~~(i), and (2)~~(k)~~(l) through ~~(m)~~(n);

(6) A notice of intent to prospect for prospecting operations that will substantially disturb, as defined in ARM 17.24.301, the natural land surface, must contain the following:

(a) information required in ARM 17.24.1001(2)(a) through ~~(h)~~(i), and (2)~~(k)~~(l) through ~~(m)~~(n);

(b) through (8) remain the same.

(9) All provisions of this subchapter, except ARM 17.24.1001(1), (2)~~(i) and~~ (j), (k), (p), and (q), (3), (4), and (5), 17.24.1003, 17.24.1014, 17.24.1016, and 17.24.1017, apply to a prospecting operation for which a permit is not required pursuant to ARM 17.24.1001.

AUTH: ~~82-4-205,~~ 82-4-226, MCA
IMP: 82-4-226, MCA

REASON: The proposed amendment to (1) clarifies the prospecting operations that may be conducted under a notice of intent by affirmatively describing the qualifying prospecting operations rather than by exclusion. The proposed amendment also consolidates provisions of (1) into fewer subsections to aid its readability.

The proposed amendment to (9) adds references to an applicable rule provision for completeness and modifies existing references to conform to amendments to ARM 17.24.1001.

17.24.1104 BONDING: ADJUSTMENT OF AMOUNT OF BOND (1) The amount of the performance bond must be ~~adjusted~~ increased, as required by the department, as the acreage in the permit area ~~is revised~~ increases, methods of mining operation change, standards of reclamation change or when the cost of future reclamation, restoration or abatement work ~~changes~~ increases. The department shall notify the permittee of any proposed bond ~~adjustment~~ increase and provide the permittee an opportunity for an informal conference on the ~~adjustment~~ proposal. The department shall review each outstanding performance bond at the time that permit reviews are conducted under ARM 17.24.414 through 17.24.416 and reevaluate those performance bonds in accordance with the standards in ARM 17.24.1102.

(2) When subsidence-related material damage to land, structures, or facilities protected under ARM 17.24.911(7)(a) through (c) occurs, or when contamination, diminution, or

interruption to a domestic water supply protected under ARM ~~17.24.911(7)(d)~~ 17.24.903(2) occurs as a result of underground mining activities, the department shall require the operator to obtain additional performance bond in the amount of the estimated cost of the repairs if the operator will be repairing damage, or in the amount of the decrease in value if the operator will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the operator will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The department may extend the 90-day time frame, not to exceed ~~1~~ one year, if the operator demonstrates and the department finds in writing that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes affecting the protected water supply have occurred, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence-related material damage to lands or protected structures, or the replacement of a protected water supply.

(3) A permittee may request reduction of the required performance bond amount upon submission of evidence to the department proving that the permittee's method of operation or other circumstances not related to the completion of reclamation work will reduce the maximum estimated cost to the department to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. Bond ~~adjustments~~ reductions which involve undisturbed land, disturbed land previously released from reclamation liability in accordance with ARM 17.24.1111 through 17.24.1115 and 17.24.1116(6), or revision of the cost estimate of reclamation are not considered bond release subject to procedures of ARM 17.24.1111. ~~All~~ Any other request~~s~~ to reduce a performance bond must be considered as a request for partial bond release in accordance with the procedures of ARM 17.24.1111 through 17.24.1116.

(4) and (5) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

REASON: The proposed amendment to (1) clarifies that its provisions apply only to bond increases rather than all bond adjustments. Section (3) applies to bond reductions.

The proposed amendment to (3) clarifies that its provisions apply only to bond reductions. The proposed amendment also more clearly defines "bond reduction." It is not uncommon for an operator to apply for release from reclamation liability without a corresponding request for the actual reduction in the amount of posted bond, be it a reimbursement of cash for a cash or certificate of deposit bond or reduction in the bond amount reflected in a surety bond or letter of credit. If only a release of liability is granted, and the operator requests at a

later date for an actual reduction in the amount of posted bond, the request is treated as a bond reduction. A decrease in bonding obligations based on completion of reclamation, however, is a bond release rather than a bond reduction and is subject to ARM 17.24.1111 through 17.24.1116.

17.24.1106 BONDING: TERMS AND CONDITIONS OF BOND (1) In addition to the requirements of 82-4-223, MCA, surety bonds must be subject to the following requirements:

~~(1) the department may not accept surety bonds in excess of 10% of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant; and~~

~~(2)~~ (a) the department may not accept surety bonds from a surety company for any person, on all permits held by that person, in excess of ~~3~~ three times the company's maximum single obligation as provided in (1) ~~of this rule~~ (b);

(b) the department may not accept surety bonds from a surety company that is not listed in the U.S. department of the treasury's listing of approved sureties (Circular 570); and

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

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

REASON: The proposed deletion of (1) is necessary because it is redundant to proposed new (1)(b). The "10% of the surety company's capital surplus account" test is reflected in the per-bond limit set forth for sureties listed in Circular 570.

The proposed addition of (1)(b) provides a convenient and standardized method for the Department to evaluate whether to accept a bond from a specific bonding company. Department of Treasury regulations require all federal agencies, including the Office of Surface Mining, to use surety companies listed in Circular 570 and to follow specified per-bond limits. The criteria in Circular 570 provide adequate criteria to ensure dependability of the surety.

17.24.1108 BONDING: CERTIFICATES OF DEPOSIT (1) The department may not accept an individual certificate for a denomination in excess of $100,000, or maximum insurable amount as determined by ~~FDIC~~ the federal deposit insurance corporation, the federal savings and loan insurance corporation, or the national credit union administration.

(2) The department may only accept automatically renewable certificates of deposit issued by a bank insured by the federal deposit insurance corporation or a credit union insured by the national credit union administration.

(3) remains the same.

(4) The department shall require that each certificate of deposit be made payable to or assigned to the department, both in writing and in the records of the bank issuing the certificate. The department shall require banks or credit unions issuing these certificates to waive all rights of setoff

or liens against these certificates.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

REASON: The proposed amendments to (1), (2), and (4) provide operators greater flexibility in satisfying bonding obligations by allowing the Department to accept bonds in the form of certificates of deposit issued by credit unions that are insured by the National Credit Union Administration. The National Credit Union Administration is an independent agency of the United States government that regulates, charters, and insures the nation's federal credit unions and insures state chartered credit unions that desire and qualify for federal insurance.

17.24.1109 BONDING: LETTERS OF CREDIT (1) Letters of credit are subject to the following conditions:

(1) through (3) remain the same, but are renumbered (a) through (c).

~~(4)~~ (d) The letter must not be for an amount in excess of 10% of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant for the most recent annual reporting period.

(e) Using the balance sheet referenced in (1)(d) and a certified income and revenue sheet, the bank must meet the three following criteria:

(i) the bank must be earning at least a 1% return on total assets (net income/total assets = 0.01 or more);

(ii) the bank must be earning at least a 10% return on equity (net income/total stockholders equity = 0.1 or more); and

(iii) capital or stockholders' equity must be at least 5.5% of total assets (total stockholders equity [shareholders equity + capital surplus + retained earnings])/total assets = 0.055 or more.

(f) Under a general financial health category, from either Sheshunoff Information Services, Moody's (Mergent Ratings Service) or Standard and Poor's, the bank must have a b+ or better rating for the current and previous two quarters.

(g) The bank's qualifications must be reviewed yearly prior to the time the letter of credit is renewed.

~~(5)~~ (h) The department may not accept letters of credit from a bank for any person, on all permits held by that person, in excess of ~~3~~ three times the company's maximum single obligation as provided in ~~ARM 17.24.1106~~ (1)(d).

(6) and (7) remain the same, but are renumbered (i) and (j).

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

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

REASON: The proposed amendment to (1)(d) requires the

balance sheet to be for the most recent annual reporting period to assure that the Department bases its evaluation of the financial condition of the bank on current financial information.

The proposed addition of (1)(e) and (f) provides prudent standards for the Department to follow when evaluating whether to accept a letter of credit from an issuing bank. These financial tests were developed in consultation with the Banking and Financial Division of the Montana Department of Commerce and are used by the Office of Surface Mining in accepting letters of credit.

The proposed addition of (1)(g) is necessary because a bank's financial health may change over time.

17.24.1116 BONDING: CRITERIA AND SCHEDULE FOR RELEASE OF BOND (1) through (5) remain the same.

~~(6) Where the permit includes an alternate postmining land use plan approved pursuant to ARM 17.24.823, the department shall also retain sufficient bond for the department to complete any additional work which would be required to achieve compliance with the general standards for revegetation in the event the permittee fails to implement the approved alternate postmining land use plan.~~

~~(7)~~ (6) For the purposes of these rules, reclamation phases are as follows:

(a) remains the same.

(b) reclamation phase II is deemed to have been completed when:

(i) remains the same.

(ii) at least ~~2~~ two growing seasons (spring and summer for two consecutive years) have elapsed since seeding or planting of the affected area;

(iii) vegetation is establishing that is consistent with the species composition, cover, production, density, diversity, and effectiveness required by the revegetation criteria in ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, 17.24.731 and 17.24.815 and the approved postmining land use;

(iii) through (v) remain the same, but are renumbered (iv) through (vi).

(c) reclamation phase III is deemed to have been completed when:

(i) the applicable responsibility period (which commences with the completion of any reclamation treatments as defined in ARM 17.24.725) has expired and the revegetation criteria in ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, ~~17.24.728, and 17.24.730 through 17.24.733~~ 17.24.731~~,~~ and 17.24.815, ~~and 17.24.825~~ as applicable to and consistent with the approved postmining land use are met;

(ii) a stable landscape has been established consistent with the approved postmining land use;

(iii) the lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of ~~the Act,~~ ARM 17.24.633~~,~~ or the permit; and

(iv) as applicable, the provisions of a plan approved by the department for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the department~~.~~; or

(v) the lands meet the special conditions provided in 82-4-235(3)(a), MCA;

(d) reclamation phase IV is deemed to have been completed when:

(i) all disturbed lands within ~~a~~ any ~~discrete~~ designated drainage basin have been reclaimed in accordance with the phase I, II, and III requirements;

(ii) through (v) remain the same.

(vi) implementation of any ~~alternate~~ alternative land use plan approved pursuant to ARM 17.24.821~~,~~ and 17.24.823~~, and 17.24.825,~~ has been successfully achieved; and

(vii) remains the same.

(7) Information from annual reports and monitoring data, generated pursuant to ARM 17.24.645, 17.24.646, 17.24.723, and 17.24.1129, and from department inspection reports may be used or referenced to support applications for bond release.

(8) remains the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

REASON: The proposed amendment to (6) deletes an unenforceable and unnecessary provision. Under the Act as amended by HB 373 in the 2003 Legislature, there are no longer "generally applicable standards" for vegetation. Instead, vegetation must achieve the particular standards applicable to the postmining land use. If an operator fails to achieve an approved alternative postmining land use, the operator must either perform additional reclamation until the alternative postmining land use is achieved or obtain a revision to the reclamation plan allowing a different postmining land use, in which case the operator's bonding obligation would be recalculated pursuant to ARM 17.24.1102.

The proposed amendment to (6)(b)(ii) clarifies that one growing season consists of the spring and summer months.

The proposed addition of (6)(b)(iii) is necessary to provide revegetation standards for phase II bond release that have not previously been defined. While renumbered (6)(b)(iv) requires the establishment of revegetation to the extent required to protect soil from accelerated erosion as a condition of phase II bond release, the rule does not provide standards for this revegetation. The proposed amendment requires the revegetation to be consistent with the species composition, cover, production, density, diversity, and effectiveness criteria of the applicable rules and the approved postmining land use, although not to the extent that these standards have been achieved. This assures that an operator cannot control

erosion as required by (6)(b)(v) for phase II bond release with the establishment of revegetation that is not compatible with the applicable revegetation standards and the approved postmining land use.

The proposed amendment to (6)(c)(i) simplifies the reference to applicable rules and reflects changes in those rules.

The proposed amendment to (6)(c)(ii) provides clarity by recognizing that the standard for achieving a stable landscape is relative and must be viewed in the context of the approved postmining land use.

The proposed amendment to (6)(c)(iii) deletes unnecessary language. The relevant general requirements of the Montana Strip and Underground Mine Reclamation Act are implemented by specific provisions of ARM 17.24.633 and the permit.

The proposed amendment to (6)(c)(iv) is for clarification.

The proposed amendment adding (6)(c)(v) provides for phase III bond release for lands that are eligible for vegetation release under 82-4-235(3), MCA. As a general rule, revegetated land must meet the success standards set forth in 82-4-235(1), MCA; phase III bond release is provided for in (6)(c)(i) through (iv). An exception to the general rule, however, is set forth in 82-4-235(3), MCA, for land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978. Currently (6)(c) does not provide for phase III bond release for land that falls within this exception. This proposed amendment cures that deficiency.

The proposed amendment to (6)(d)(i) clarifies that the condition of only disturbed land will be evaluated for phase IV bond release.

The proposed amendment to (6)(d)(vi) reflects the enactment of HB 373 by the 2003 Legislature substituting "alternate reclamation" with "alternative postmining land use." The proposed amendment also revises rule citations to conform with proposed amendments to those rules.

The proposed addition of (7) provides guidance to operators as to sources of information that may be relied on for bond release purposes.

17.24.1125 LIABILITY INSURANCE (1) remains the same.

(2) The policy must be maintained in full force during the life of the permit or any renewal thereof~~, including completion of all reclamation operations required under the Act and rules adopted pursuant thereto~~ and until final bond release on the permit area.

(3) remains the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-231, MCA

REASON: The proposed amendment to (2) requiring maintenance of liability insurance until final bond release is more precise than the deleted provision. The new language makes

no substantive change in the rule.

17.24.1129 ANNUAL REPORT (1) remains the same.

(2) The annual report must include:

(a) through (d)(vii) remain the same.

(e) ~~any information on vegetation cover and production required by rules relating to revegetation and alternate reclamation~~ vegetation monitoring data and analysis pursuant to ARM 17.24.723;

(f) through (j) remain the same.

(3) Maps containing information listed in ARM 17.24.305(1) must be certified in accordance with ARM 17.24.305.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-237, MCA

REASON: The proposed amendment to (2)(e) is more precise than the deleted provision, specifying the information that must be included in an annual report regarding vegetation.

The proposed amendment to (3) is more precise, requiring only maps containing information listed in ARM 17.24.305 to be certified. It is not uncommon for an operator to provide a map with an annual report that does not contain any information that would need certification if submitted as part of an application. There is no reason to require certification only because it is filed with the annual report.

17.24.1131 PROTECTION OF PARKS, ~~AND~~ HISTORIC SITES, AND OTHER LANDS (1) In addition to those areas upon which strip or underground mining is specifically prohibited pursuant to 82-4-227(13), MCA, subject to valid existing rights, no strip or underground coal mining may be conducted, unless the operation existed on August 3, 1977:

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

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-227, MCA

REASON: The proposed amendment to the rule title more accurately describes the scope of the rule, which includes rules within the national trail system.

The proposed amendment is more precise because it refers to the relevant subsection of the cited section of the Act.

17.24.1132 AREAS UPON WHICH COAL MINING IS PROHIBITED: DEFINITIONS AND STANDARD FOR MEASUREMENT OF DISTANCES (1) For the purpose of 82-4-227(13), MCA, the following definitions apply:

(a) "valid existing rights" ~~means:~~ has the same definition as the definition of the term contained in 30 CFR 761.5 (2003), which is incorporated by reference into this rule. Copies of 30 CFR 761.5 may be obtained from the department at its Helena office.

~~(i) except for haul roads,~~

~~(A) those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract or other document which authorizes the applicant to produce coal; and~~

~~(B) the person proposing to conduct strip or underground coal mining operations on such lands either:~~

~~(I) had been validly issued, on or before August 3, 1977, all state and federal permits necessary to conduct such operations on those lands; or~~

~~(II) can demonstrate to the department that the coal is both needed for, and immediately adjacent to, an on-going strip or underground coal mining operation for which all permits were obtained prior to August 3, 1977;~~

~~(ii) for haul roads, "valid existing rights" means:~~

~~(A) a recorded right-of-way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977; or~~

~~(B) any other road in existence as of August 3, 1977;~~

~~(iii) interpretation of the terms of the document relied upon to establish valid existing rights must be based upon applicable state statutes and case law concerning interpretation of documents conveying mineral rights, or where no applicable state laws exist, the usage and custom at the time and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same strip or underground mining operations for which the applicant claims a valid existing right;~~

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

(b) through (g) remain the same, but are renumbered (c) through (h).

(2) remains the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-227, MCA

REASON: The proposed amendment to (1)(a) changes the definition of "valid existing rights" (VER) to remain consistent with federal requirements as requested by the Office of Surface Mining in its letter dated April 2, 2001. The current state definition of VER is narrower than the federal definition in several aspects, possibly resulting in increased exposure to takings claims. The current state definition is also less strict on other matters including a failure to expressly provide that an operation conducted under a VER is subject to all requirements of the Act, a failure to require local permits to be obtained in addition to state and federal permits for the establishment of a VER, a more narrow "need for an adjacent standard" for the establishment of a VER, and a VER standard for roads that is inconsistent with the federal definition. For efficiency, the proposed amendment cites to the federal regulation defining "valid existing rights" rather than setting forth its text.

17.24.1133 AREAS UPON WHICH COAL MINING IS PROHIBITED: PROCEDURES FOR DETERMINATION (1) remains the same.

(2)~~(a)~~ Whenever a proposed operation would be located on any lands listed in 82-4-227(7) or (13), MCA, (except for proximity to public roads) or ARM 17.24.1131, the department shall reject the application ~~if the applicant has no valid existing rights for the area or if the operation did not exist on August 3, 1977~~ unless~~.~~:

(a) the applicant has valid existing rights for the proposed permit area; or

(b) the operation existed when the land came under the protection of 82-4-227(7) or (13), MCA, (except the proximity of public roads) or ARM 17.24.1131. This exception applies only to land within the permit area as it exists when the land comes under this protection.

(3) Procedures for submitting requests and for determining valid existing rights must be conducted in accordance with 30 CFR 761.16 (2003), which is incorporated into this rule by this reference. Copies of 30 CFR 761.16 may be obtained from the department at its Helena office.

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

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-227, MCA

REASON: The proposed amendment to (2) makes the exception for existing operations under the Montana program parallel federal regulations in two aspects. See 30 CFR 761.11 and 761.12. First, the proposed amendment requires the operation to exist on the date the land comes under the protection of 82-4-227(7) or (13) or ARM 17.24.1131 rather than the date the Surface Mine Control and Reclamation Act was enacted. Although the former definition was not deemed to be inconsistent with the federal exception for existing operations, it potentially resulted in increased exposure to takings claims. Second, the amendment limits the exception to lands that were within the permit area to make the exception consistent with the federal exception set forth in 30 CFR 761.12 as required by the Office of Surface Mining in its letter dated April 2, 2001.

The proposed amendment to (3) makes the procedure for determining valid existing rights consistent with federal regulations as required by the Office of Surface Mining in its letter dated April 2, 2001. The proposed amendment cites to the federal regulation providing valid existing rights determination procedures rather than setting forth its text for efficiency.

17.24.1201 FREQUENCY AND METHODS OF INSPECTIONS (1) The department shall conduct an average of at least ~~1~~ one partial inspection per month of each active mining operation and such partial inspections of each inactive mining operation as are necessary to enforce the Act, the rules adopted under the Act and the permit, at least ~~1~~ one complete inspection per calendar quarter of each active and inactive mining operation, and such periodic partial or complete inspections of prospecting

operations as are necessary to enforce the Act, the rules adopted pursuant thereto, and the permit.

(2) A partial inspection is an on-site or aerial observation of the operator's compliance with some of the mining or prospecting permit conditions and requirements. Aerial inspections shall be conducted in a manner and at a time that reasonably ensure the identification and documentation of conditions at each operation in relation to permit conditions and requirements.

(3) A complete inspection is an on-site observation of the operator's compliance with all of the mining or prospecting permit conditions and requirements within the entire area disturbed or affected by the operation.

(4) Inspections must occur without prior notice to the permittee, except for necessary on-site meetings, be conducted on an irregular basis, and be scheduled to detect violations on nights, weekends, and holidays.

AUTH: ~~82-4-205~~ 82-4-204, MCA
IMP: 82-4-205, 82-4-235, 82-4-237, 82-4-251, MCA

REASON: The proposed amendment to (1) adds a provision regarding inspections of inactive mining operations to conform to the federal inspection requirements at 30 CFR 840.11.

The proposed amendments adding (2) and (3) provide definitions for partial and complete inspections to inform the public and industry of the scope of the Department's inspection requirements. These definitions are similar to those contained in 30 CFR 840.11.

The proposed amendment adding (4) sets forth inspection requirements that previously were set forth in ARM 17.24.1202(1). This amendment reflects a reorganization of ARM 17.24.1201 and 17.24.1202 so that the former addresses all inspection requirements and the latter addresses actions to be taken by the Department as a result of an inspection.

17.24.1202 ~~METHOD~~ CONSEQUENCES OF INSPECTIONS AND COMPLIANCE REVIEWS (1) ~~Inspections must occur without prior notice to the permittee, except for necessary on-site meetings, be conducted on an irregular basis, and be scheduled to detect violations on nights, weekends, and holidays.~~ Inspectors shall ~~collect evidence of violations~~ examine mining and reclamation activities and promptly file with the department inspection reports adequate to determine whether violations exist.

(2) ~~In addition to the requirements of ARM 17.24.1201, the department shall inspect revegetation as required by ARM 17.24.720.~~ If it is determined on the basis of an inspection that the permittee is, or any condition or practice exists, in violation of any requirement of this part or any permit condition required by this part, the director or an authorized representative shall promptly issue a notice of noncompliance or order of cessation for the operation or the portion of the operation relevant to the condition, practice, or violation in accordance with 82-4-251, MCA, and this subchapter.

(3) The department may order changes in mining and reclamation plans as are necessary to ensure compliance with the Act and the rules adopted pursuant thereto.

(4) If on the basis of field inspection or review of records or reports the department determines that reclamation is unsuccessful in terms of the Act, the rules adopted pursuant thereto or permit conditions or requirements, the department shall order the operator to immediately investigate and determine the cause. The operator shall subsequently submit an investigative report along with a prescribed course of corrective action, so that alternatives can be employed to promptly ensure compliance with the Act, the rules adopted pursuant thereto, and the permit.

AUTH: ~~82-4-205~~ 82-4-204, MCA
IMP: 82-4-205, 82-4-231, 82-4-233, 82-4-235, 82-4-237, 82-4-251, 82-4-254, MCA

REASON: The proposed amendment to (1) deletes a provision that is proposed to be set forth in ARM 17.24.1201(4) for reorganizational purposes discussed above. The proposed amendment also clarifies that the purpose of an inspection is to "examine mining and reclamation activities" rather than the more narrow "collection of evidence of violations."

The proposed amendment to (2) deletes the provision referring to inspections of revegetation under ARM 17.24.720 because that provision is covered by the broader requirements proposed to be set forth in (4). The amendment also adds provisions for the Department's issuance of notices of noncompliance and orders of cessation under 82-4-251, MCA, which may result from an inspection.

The proposed addition of (3) is necessary to add language reflecting the department's statutory authority, contained in 82-4-237(3), MCA, to order changes in the mining and reclamation plans to give a complete list of actions the department may take to ensure compliance with the Act following an inspection.

The amendment to add (4) replaces and broadens the provisions of ARM 17.24.720. Under that rule, the Department is required to order the operator to immediately investigate the cause of unsuccessful revegetation and the operator is required to subsequently submit an investigative report detailing a corrective course of action. This approach is appropriate to address other aspects of reclamation that are discovered to be unsuccessful. For example, soils might be placed in accordance with permit requirements but demonstrate characteristics that will not support revegetation, a sediment pond may be constructed in accordance with permit requirements yet fill up and lose capacity faster than predicted, or spoils may be relieved of compaction according to permit requirements but be negated by other factors. These unsuccessful reclamation efforts could not be cured by an abatement order in the context of a violation action because they were conducted according to the permit. Nor is a permit review under ARM 17.24.414 sufficient, occurring once every five years.

17.24.1206 NOTICES, ORDERS OF ABATEMENT AND CESSATION ORDERS: ISSUANCE AND SERVICE (1) The department shall issue a cessation order for each violation, condition, or practice that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, for failure to comply with an order of abatement, and for conducting mining operations or prospecting without a permit. Within 60 days after issuance of a cessation order, the department shall notify, in writing, any person who has been identified pursuant to ARM 17.24.303~~(7)~~(1)(g) and ~~(8)~~(1)(h), and 17.24.413~~(4)~~(1)(d), as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller. The department shall issue a notice of noncompliance for other violations.

(2) and (3) remain the same.

(4) ~~If the notice of noncompliance or cessation order does not require an abatement, terminations of abatement need not be issued.~~ Filing of an application for review does not operate as a stay of any order.

(5)(a) Except as provided in (5)(b)(ii) ~~below~~, an abatement order must specify compliance within a reasonable period of time, not exceeding 90 days.

(b) through (c) remain the same.

(d) Whenever any of the conditions in (5)(b) ~~above~~ exist, the permittee may request extension of the abatement period beyond 90 days. The department may not grant an extension for more time than is necessary for abatement. The permittee has the burden of establishing by clear and convincing proof that he is entitled to an extension. In determining whether or not to grant an abatement period exceeding 90 days, the department may consider any relevant written or oral information from the permittee or any other source. The department shall promptly and fully document in the file its reasons for granting or denying the request. The department's decision on an application for extension beyond 90 days is subject to hearing if a hearing is requested by a person with an interest that is or may be adversely affected; such a request must be submitted in writing to the board of environmental review within 30 days of notice of the department's decision on the application. The hearing must be a contested case hearing in accordance with 82-4-206, MCA.

(e) remains the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-251, MCA

REASON: The proposed amendment deletes the first sentence of (4) because it is self-evident that if the notice of noncompliance or cessation order does not require an abatement, a termination of abatement order does not need to be issued.

The proposed amendment to (5)(d) reflects the enactment of HB 126 by the 2001 Legislature transferring the responsibility

for holding a hearing from the Department to the Board of Environmental Review. The amendment also adds a citation to the statutory provision requiring the hearing to be a contested case hearing under the Montana Administrative Procedure Act.

17.24.1211 PROCEDURE FOR ASSESSMENT AND WAIVER OF CIVIL PENALTIES (1) remains the same.

(2) Within 30 days after issuance of the notice of noncompliance, the department shall serve a notice of violation and proposed penalty or notice of violation and waiver of penalty. Failure to serve the notice of violation and proposed penalty within 30 days is not grounds for dismissal of the penalty unless the person against whom the penalty is assessed demonstrates actual prejudice resulting from the delay and makes objection in the normal course of administrative review. If the notice of violation and proposed penalty is tendered by mail at the address of the person, as set forth in the permit in case of a permittee, and he or she refuses to accept delivery of or to collect such mail, service is completed upon such tender. In order to contest the fact of violation or the amount of penalty, the person charged with the violation must file a written request for hearing to the board of environmental review within 20 days of service of the notice of violation and proposed penalty. The hearing must be a contested case hearing in accordance with 82-4-206, MCA. If the department vacates the notice of violation, it shall also vacate the notice of noncompliance. At any time after issuance of the notice of violation and proposed penalty and before commencement of the hearing, or, if a hearing is not requested, before issuance of findings of fact, conclusions of law, and order, the person may confer with the department regarding the proposed penalty. After the hearing or, if a hearing is not requested, after the 20 day request period has expired, the department shall issue its findings of fact, conclusions of law, and order.

(3) and (4) remain the same.

AUTH: 82-4-204~~(3)~~, ~~82-4-205(7),~~ 82-4-254~~(2)~~, MCA
IMP: 82-4-254~~(2)~~, MCA

REASON: The proposed amendment to (2) reflects the enactment of HB 126 by the 2001 Legislature transferring the responsibility for holding a hearing from the Department to the Board of Environmental Review. See 82-4-206, MCA. The amendment also adds a citation to the statutory provision requiring the hearing to be a contested case hearing under the Montana Administrative Procedure Act.

17.24.1212 POINT SYSTEM FOR CIVIL PENALTIES AND WAIVERS

(1) The department shall assign points for each violation based upon the following criteria:

(a) ~~History~~ In assessing the history of recent violations~~:~~, ~~1~~ one point must be assigned for each violation contained in a notice of noncompliance and ~~5~~ five points must be assigned for each violation contained in a cessation order. A

violation must not be counted if the notice or order is subject to a pending administrative or judicial review or if the time to request review or to appeal any administrative or judicial decision has not expired. Thereafter it must be counted for ~~1~~ one year, except that a violation for which the notice or order has been vacated or dismissed must not be counted.

(b) ~~Seriousness:~~ In assessing the seriousness of a violation, points must be determined in accordance with ~~1~~ one of the following subsections:

(i) ~~Harm to public health, public safety or environment. If~~ if the violation created a situation in which the public health, public safety, or environment could have been harmed, and the violated law, rule, order, or permit term or condition was designed to prevent such harm, the violation must be assigned up to 15 points, depending upon the probability of occurrence of the harm which the violated standard was designed to prevent. In addition, the violation must be assigned up to 15 points, depending on significance and amount of potential or actual harm~~.~~;

(ii) ~~Impairment of administration:~~ if the violation was of an administrative requirement but did not impair the department's administration of the Act, rules, or permit, it may assign no points under this subsection. In the case of a violation of an administrative requirement that causes impairment of administration, the violation must be assigned one to 30 points, depending upon the degree of impairment. An administration requirement, such as the keeping of records and filing of reports, is ~~1~~ one that does not directly affect public health, safety, or the environment.

(c) ~~Negligence:~~ In assessing the negligence in committing a violation, if a violation has occurred through no negligence on the part of the permittee, it must not be assigned points under this category. A violation involving ordinary negligence, which is failure to exercise toward the violated legal requirement the care ordinarily exercised by a person of common prudence, must be assigned ~~1~~ one to 12 points depending upon the degree of negligence. If the violation occurred due to gross negligence which is gross or reckless disregard for the violated legal requirement, or intentional conduct, it must be assigned 13 to 25 points depending upon the degree of fault.

(d) ~~Good~~ In assessing good faith~~:~~, if the person abates the violation in an adequate manner upon being notified of the violation or if the violation requires no abatement, no points may be assigned. If the violator takes extraordinary measures to achieve compliance before the time set in the abatement order or to minimize harm, up to 10 points may be deducted from the total points assigned. However, reduction of points due to good faith does not allow waiver of an otherwise unwaivable penalty.

(2) ~~Amount of penalty: the~~ The amount of civil penalty must be assessed based on the following schedule:

The schedule through (3) remain the same.

(4) If an administrative order issued after a hearing requested under 82-4-254(3), MCA, increases the amount of penalty due, the person to whom the order is issued shall pay

the difference within 15 days of receipt of the order. If the administrative order decreases or eliminates the penalty due, the department shall refund within 30 days.

(5) remains the same.

AUTH: 82-4-204~~(3)~~, ~~82-4-205(7)~~, 82-4-254~~(2)~~, MCA
IMP: 82-4-254~~(2)~~, MCA

REASON: The proposed amendment to (1)(b)(i) corrects an error in punctuation.

The proposed amendment to (4) adds a statutory reference to clarify that its provisions apply to an administrative order issued after a contested case hearing held before the Board of Environmental Review, not a public hearing.

The internal catchphrases are being deleted from the rule to meet Secretary of State formatting standards.

17.24.1219 INDIVIDUAL CIVIL PENALTIES: PROCEDURE FOR ASSESSMENT (1) remains the same.

(2) The notice of proposed individual civil penalty assessment becomes a final order ~~30~~ 20 days after service upon the individual unless:

(a) the individual files within ~~30~~ 20 days of service of the notice of proposed individual civil penalty assessment a request for hearing pursuant to 82-4-254(3), MCA; or

(b) and (3) remain the same.

(4) The hearing on the individual civil penalty must be a contested case hearing ~~subject to Title 2, chapter 4, parts 6 and 7, MCA~~ conducted in accordance with 82-4-206(2), MCA.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-254, MCA

REASON: The proposed amendments to (2) and (2)(a) conform to the timeframe within which an individual is required to request a hearing with the provisions of 82-4-254, MCA. The remaining proposed amendments to (2)(a) and to (4) add the statutory basis for requesting a hearing and for the type of hearing to be conducted, respectively.

17.24.1225 SMALL OPERATOR ASSISTANCE PROGRAM: DATA REQUIREMENTS (1) through (1)(b) remain the same.

(2) Data collection and the results provided must be sufficient to satisfy the requirements for:

(a) a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off-site.

(i) The data required for this determination must be collected pursuant to ARM 17.24.304~~(5)~~(1)(e) and ~~(6)~~(1)(f);

(ii) and (iii) remain the same.

(b) a statement of the results of test borings or core samplings from the proposed permit area, including information on overburden and coal, as required by ARM 17.24.304~~(7)~~(1)(g)(i) and 17.24.322(2)(a);

(c) remains the same.

(d) cultural and historic information pursuant to ARM 17.24.304~~(2)~~(1)(b) and ~~(4)~~(1)(d) and the development of mitigation measures pursuant to ARM 17.24.318;

(e) remains the same.

(f) climatological information and an air pollution control plan pursuant to ARM 17.24.304~~(8)~~(1)(h) and 17.24.311, respectively;

(g) a vegetation survey and revegetation plan pursuant to ARM 17.24.304~~(9)~~(1)(i) and 17.24.313(5) and applicable rules in subchapter 7, respectively;

(h) a fish and wildlife survey and a fish and wildlife plan pursuant to ARM 17.24.304~~(10)~~(1)(j) and 17.24.312, respectively;

(i) a soil survey and a soil salvage and redistribution plan pursuant to ARM 17.24.304~~(11)~~(1)(k) and 17.24.313~~(4)~~(1)(f) and applicable rules in subchapter 7, respectively; and

(j) a statement of the condition, capability and productivity of the land pursuant to ARM 17.24.304~~(12)~~(1)(l).

(3) The statement under (2)(b) ~~of this rule~~ may be waived by the department by a written determination that such requirements are unnecessary with respect to the specific permit application.

(4) remains the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-221, MCA

REASON: This rule is being amended to correct internal reference cites because of amendments being made in this rulemaking notice to the rules cross-referenced.

17.24.1226 SMALL OPERATOR ASSISTANCE PROGRAM: QUALIFICATION OF LABORATORIES, CONSULTANTS, AND CONTRACTORS

(1) remains the same.

(2)(a) To qualify for designation a firm shall demonstrate that it:

(i) through (v) remain the same.

(vi) has analytical, monitoring and measuring equipment capable of meeting the applicable standards and methods contained in ARM ~~17.24.625~~ 17.24.645 and 17.24.646; and

(vii) ~~must be~~ is capable of performing either the determination or statement under ARM 17.24.1225(2)(a) and (b).

(b) remains the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-221, MCA

REASON: The proposed amendment to (2)(a)(vi) corrects a rule reference. The proposed amendment to (2)(a)(vii) corrects a grammatical error.

17.24.1250 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: CONTENTS OF STATEMENT (1) Each employee who performs any

function or duty under the Act shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The report must be on OSM Form ~~705-1~~ 23.

(2) through (4) remain the same.

AUTH: 82-4-204, ~~82-4-205,~~ MCA
IMP: 82-4-254, MCA

REASON: The proposed amendment reflects the Office of Surface Mining's revision of its form to the indicated designation.

17.24.1255 RESTRICTIONS ON FINANCIAL INTERESTS: MULTIPLE INTEREST ADVISORY BOARDS (1) Members of advisory boards and commissions (established in accordance with state law or rules to represent multiple interests) who perform a function or duty under the Act shall file an OSM Form ~~705-1~~ 23 with the director in accordance with the schedule established for employees in ARM 17.24.1219(2). They shall recuse themselves from proceedings that may affect their direct or indirect financial interests.

AUTH: 82-4-204, 82-4-205, MCA
IMP: 82-4-254, MCA

REASON: The proposed amendment reflects the Office of Surface Mining's revision of its form to the indicated designation.

17.24.1263 SUSPENSION OR REVOCATION OF BLASTER CERTIFICATION (1) The following are grounds for suspension or revocation of blaster certification:

(a) ~~noncompliance~~ failure to comply with any order of the department;

(b) through (2) remain the same.

(3) If the department has probable cause to believe that a certified blaster has committed any of the acts prohibited in (1) ~~of this rule~~ and that the blaster's certification should or must be suspended or revoked, the department shall notify the blaster and his employer in writing by certified mail at the address contained in the blaster's application for certification or at a subsequent address of which the blaster has notified the department in writing. The blaster does not defeat service by refusing to accept or failing to pick up the notice. The notice must advise the blaster of the department's proposed action, the alleged facts upon which the proposed action is based, and the blaster's right to request a contested case hearing before the board of environmental review. If the department determines that suspension of the blaster's certification is reasonably necessary in order to protect human life or limb or the environment, it may suspend the certification until the hearing is held; provided, however, that no such suspension may be in effect for longer than 45 days. At the close of the hearing,

the hearing officer may, based on a finding that the department will probably prevail and that continued suspension is reasonably necessary, continue the suspension until a final decision is made.

AUTH: 82-4-204~~(4)~~, ~~82-4-205(7),~~ 82-4-231~~(10)(e)~~, MCA
IMP: 82-4-231~~(10)(e)~~, MCA

REASON: The proposed amendment to (1)(a) corrects an inappropriate use of the term "noncompliance." The term "noncompliance" is a term of art referring to the initial document issued for a violation of any requirement of the Act or any permit provision required by the Act that does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources. The term should not be used to describe a failure to comply with an order of the department.

The proposed amendments to (3) clarify that the hearing requested by a blaster whose certification has been suspended or revoked is a contested case hearing before the Board of Environmental Review.

17.24.1301 MODIFICATION OF EXISTING PERMITS: ISSUANCE OF REVISIONS AND PERMITS (1) ~~By January 13, 1991~~ Within one year of [the effective date of this rule amendment], each operator and each test pit prospector shall submit to the department~~:~~

~~(a) an index to the existing permit cross-referencing each section of the permit to subchapters 3 through 12, as they read on January 12, 1989, and as they read on January 13, 1989;~~

~~(b) a modified table of contents for the existing permit;~~

~~(c) maps showing each portion of the permit area on which each of the following had been completed as of 11:59 pm on January 12, 1989:~~

~~(i) removal of overburden only;~~

~~(ii) removal of overburden and coal only;~~

~~(iii) removal of overburden and coal and backfilling and grading only;~~

~~(iv) removal of overburden and coal, backfilling and grading, and soiling only; and~~

~~(v) removal of overburden and coal, backfilling and grading, soiling and seeding and planting;~~

~~(d)~~ an application for all permit revisions necessary to bring the permit and operations conducted thereunder into compliance with ~~this rule and ARM 17.24.426 and 17.24.427, subchapters 5 through 10, and 17.24.1101 through 17.24.1122~~ subchapters 5 through 10 as they read on [the effective date of this rule amendment].

(2) A permit revision application submitted solely for purposes of (1)~~(d) of this rule~~ is a minor revision for purposes of subchapter 4. ~~The department shall issue written findings granting or denying the application within 5 months of its receipt.~~

(3) No permittee may continue to mine or reclaim under an operating permit after ~~July 13, 1991~~ the midterm (date that is two and one-half years after permit issuance or renewal) of the permit or the permit renewal date, whichever occurs later, unless the permit has been revised to comply with subchapters 3 through 12, as amended ~~January 13, 1989~~ on [the effective date of this rule amendment].

~~(4) As of the date that a permit is revised to comply with subchapters 3 through 12, as amended on January 13, 1989, the permittee shall conduct all operations in compliance with the permit and subchapters 3 through 12, as amended, except that:~~

~~(a) any area in which backfilling and grading operations had been completed on January 12, 1989, is subject to the backfilling and grading requirements as they read on that date;~~

~~(b) any area in which soiling operations had been completed on January 12, 1989 is subject to the soiling requirements as they read on that date; and~~

~~(c) any area for which the final minimum period of responsibility for establishing vegetation, as provided in ARM 17.24.725(1), had commenced on or before May 17, 1990, of ARM 17.24.724 through 17.24.735, as amended is subject to:~~

~~(i) the seeding and planting and related requirements as they read on that date; or~~

~~(ii) the seeding and planting requirements on or after May 18, 1990, of ARM 17.24.724 through 17.24.726, 17.24.728, 17.24.730 through 17.24.733, as amended.~~

~~(5) Each new permit and each amendment to an existing permit applied for and issued on or after January 13, 1989, must be in compliance with subchapters 3 through 12 as they read on January 13, 1989.~~

AUTH: 82-4-204, ~~82-4-205~~, MCA
IMP: 82-4-221, 82-4-222, MCA

REASON: The proposed amendments adding provisions to (1), (1)(d) and (3) are reasonably necessary to allow complete submission and orderly processing of required strip mine permit modifications without interruption of operations. Permit revisions will be necessary for rule changes that impose more stringent requirements if a permit does not comply with the amended rule.

The proposed amendment to (2) corrects an internal citation.

Finally, the proposed amendments delete provisions throughout the rule that address permit modifications required by previous rule amendments and that are no longer relevant.

5. The proposed new rule provides as follows:

NEW RULE I CROPLAND RECLAMATION (1) The department may not approve a postmining land use of cropland unless the following criteria are met:

(a) prior to mining, all soils within the proposed cropland reclamation area must have been at least capability

class IV, based on U.S. natural resources conservation service criteria;

(b) soils proposed for use must have the following properties:

(i) loamy texture, as defined by the U.S. soil conservation service in the Soil Survey Manual, chapter 4 as revised May, 1981, pp. 4-56 and 4-57;

(ii) rock fragment (gravels, cobbles, and channers only) contents less than 20% in the first lift and less than 35% in the second lift;

(iii) after materials are replaced, no greater than moderate wind and water erosion hazards as determined by U.S. natural resources conservation service procedures; and

(iv) levels of electrical conductivity, sodium adsorption ratio, and plant available water-holding capacity meeting the criteria for class III soils according to the "Land Capability Guide for Montana, U.S. Soil Conservation Service, June 1988", which is incorporated by reference into this rule. A copy of this document may be obtained from the Natural Resources Conservation Service, 10 E. Babcock St., Bozeman, MT 59715;

(c) soil materials must be capable of selection and handling in such a way, and redistribution to such a thickness, and the underlying regraded spoil properties must be of sufficient quality, that the postmining productivity of the root zone will be sufficient to support cropland as the postmining land use;

(d) slope gradients must not exceed 8%;

(e) the area must receive a minimum of 12 inches average annual precipitation, or there must be sufficient irrigation water available and committed to maintain crop production;

(f) the area must not be subject to flooding that would impair its suitability as cropland due to flood effects including, but not limited to, erosion, siltation, and inundation;

(g) the area must have a minimum of 90 frost-free days per year; and

(h) the department must determine that:

(i) saline seep on the proposed cropland area will not occur; and

(ii) the reclaimed area will not function as a saline seep recharge area for lands downgradient.

(2) The operator shall comply with the following requirements in reclaiming to cropland:

(a)(i) soil materials must be selected and handled in such a way and redistributed to such a thickness, and the underlying regraded spoil properties must be of sufficient quality such that the postmining productivity of the root zone will be sufficient to support cropland as the postmining land use.

(ii) the following minimum requirements must be met:

(A) soils must be replaced to a minimum thickness of 24 inches; and

(B) the root zone thickness must be consistent with the requirements of ARM 17.24.501(2);

(b) if necessary to protect replaced soil materials from

wind and water erosion, or if necessary to enhance soil productivity, stability or the capacity for root penetration, a grass-legume mixture must be planted and maintained as determined by the department; and

(c) soil amendments must be added in accordance with ARM 17.24.718.

AUTH: 82-4-204, MCA
IMP: 82-4-233, 82-4-235, MCA

REASON: The proposed new rule is being added to maintain important standards for reclaiming disturbed land to cropland. The proposed new rule transfers the standards for reclaiming to cropland in the context of alternate reclamation currently set forth in ARM 17.24.825, which is proposed for deletion. The proposed relocation of these standards from ARM 17.24.825 to a new rule in subchapter 7 reflects enactment of HB 373 by the 2003 Legislature.

6. The Board is proposing to repeal the following rules:

ARM 17.24.323, located at page 17-2007, Administrative Rules of Montana (AUTH: 82-4-204, 82-4-205, MCA; IMP: 82-4-222, MCA).

REASON: Grazing is a discretionary management to be used by a mine operator to achieve the approved revegetation and postmining land use results. Under this rule, the Department has been involved with determining when and how grazing would be used. The Board has determined that implementation and management of grazing within a mine permit area should be the responsibility of the operator. If the operator fails to appropriately use grazing, the desired/approved revegetative/land use results will probably not be obtained and phase III bond release will not be realized. The Department has the power to require appropriate practices or to pursue enforcement actions if the operator violates any rules regarding revegetation or land use.

ARM 17.24.719, located at page 17-2160, Administrative Rules of Montana (AUTH: 82-4-204, MCA; IMP: 82-4-233, 82-4-235, MCA).

REASON: Grazing would be covered in proposed ARM 17.24.718(3), making this rule no longer necessary. Additionally, the operator should be responsible for establishment and management of a grazing system that is not harmful to the reestablishing vegetation. ARM 17.24.719 unnecessarily involves the Department in the establishment and management of grazing systems. See ARM 17.24.718 for further discussion of this matter.

ARM 17.24.720, located at page 17-2161, Administrative Rules of Montana (AUTH: 82-4-204, MCA; IMP: 82-4-233, 82-4-235, MCA).

REASON: This rule is proposed for repeal because its

provisions have been restated in a broader context in the proposed amendment to ARM 17.24.1202.

ARM 17.24.728, located at page 17-2169, Administrative Rules of Montana (AUTH: 82-4-204, MCA; IMP: 82-4-233, 82-4-235, MCA).

REASON: The amendments to the Act passed by the 2003 Legislature in HB 373 provide for less restrictive use of introduced species as long as the use of these species is consistent with the approved postmining land use. Previously, in order to have vegetation composed of predominantly introduced species, the Act provided that an operator had to apply for, and the Department had to approve, an alternate revegetation plan. This rule implemented that requirement. The amended Act no longer requires a predominance of native species. However, provisions in the Act (82-4-233(1)(b) and 82-4-235(1)(g), MCA) and in the proposed rules (ARM 17.24.711) require the use of native species or introduced species as appropriate for the approved postmining use.

ARM 17.24.730, located at page 17-2171, Administrative Rules of Montana (AUTH: 82-4-204, MCA; IMP: 82-4-233, 82-4-235, MCA).

REASON: This rule is proposed for repeal because its provisions are included in proposed ARM 17.24.726(4).

ARM 17.24.732, located at page 17-2171, Administrative Rules of Montana (AUTH: 82-4-204, MCA; IMP: 82-4-233, 82-4-235, MCA).

REASON: This rule supplemented the former statutory requirement that land previously used as cropland be reclaimed to rangeland unless alternative reclamation was approved. The amendments to the Act passed by the 2003 Legislature in HB 373 allow replacement of cropland with cropland without the need for the approval of an alternate reclamation plan. Proposed ARM 17.24.726 summarizes the standards for successful revegetation. ARM 17.24.732 is duplicative and is no longer needed.

ARM 17.24.733, located at pages 17-2171 and 17-2172, Administrative Rules of Montana (AUTH: 82-4-204, 82-4-205, MCA; IMP: 82-4-233, 82-4-235, MCA).

REASON: Measurement standards for woody species (trees and shrubs) have been included in proposed ARM 17.24.726(1), (2), (3), (4) and (5), rendering ARM 17.24.733 unnecessary.

ARM 17.24.824, located at pages 17-2218 and 17-2219, Administrative Rules of Montana (AUTH: 82-4-204, 82-4-205, MCA; IMP: 82-4-232, MCA).

REASON: Proposed amendments in this rulemaking relocate the provisions of (2) and (4) to ARM 17.24.762 and 17.24.821(1), respectively. Sections (1) and (5) have been superceded by

changes to the Act pursuant to HB 373 passed by the 2003 Legislature. Section (3) is redundant with the text of 82-4-232(7), MCA.

ARM 17.24.825, located at pages 17-2221 through 17-2223, Administrative Rules of Montana (AUTH: 82-4-204, 82-4-205, MCA; IMP: 82-4-233, MCA).

REASON: The context of this rule (alternate revegetation as alternate reclamation) has been superceded by amendments to the Act enacted by the 2003 Legislature in HB 373. Provisions in (1)(b) through (2), however, are still appropriate as requirements for cropland reclamation and are incorporated, with some changes, into a proposed new rule in subchapter 7. In addition, the provisions in (6)(b) regarding wetlands is similar to that currently found in ARM 17.24.751(2)(f).

ARM 17.24.826, located at pages 17-2223 and 17-2224, Administrative Rules of Montana (AUTH: 82-4-204, 82-4-205, MCA; IMP: 82-4-223, 82-4-232, 82-4-235, MCA).

REASON: This rule is proposed for repeal because alternate reclamation as provided in this rule has been removed by amendments to the Act enacted by the 2003 Legislature in HB 373.

7. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to 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. June 4, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

8. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

9. 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.

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

Reviewed By: BOARD OF ENVIRONMENTAL REVIEW

John F. North By: *Joseph W. Russell*
JOHN F. NORTH JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairperson

Certified to the Secretary of State, April 12, 2004.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.50.215 pertaining to disposal of junk vehicles through state disposal program	NOTICE OF PROPOSED AMENDMENT (JUNK VEHICLE) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 22, 2004, the Department of Environmental Quality proposes to amend the above-stated rule.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., May 10, 2004, to advise us of the nature of the accommodation that you need. Please contact Darrell Stankey, Junk Vehicle Program, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-3048; fax (406) 444-1734; email dstankey@state.mt.us.

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

17.50.215 DISPOSAL OF JUNK VEHICLES THROUGH STATE DISPOSAL PROGRAM (1) and (2) remain the same.

(3) A motor vehicle wrecking facility may request the department to contract for removal of junk vehicles from its premises if there is an accumulation of at least 200 vehicles at the facility. If the department can handle such requests, the motor vehicle wrecking facility ~~is to pay a disposal fee of $2 for each vehicle submitted to the disposal program. At the same time, it~~ is to surrender to the department all records maintained on the vehicle.

AUTH: 75-10-503, MCA
IMP: 75-10-503, MCA

REASON: The proposed amendment is necessary to conform the rule to current state statutes. Section 75-10-513(1), MCA, was amended by the 2003 Legislature (Ch. 281, Laws of 2003) to eliminate a $2 fee that a motor vehicle wrecking facility was required to pay to the Department for each junk vehicle submitted to the Department. There are currently 176 wrecking facilities that conceivably could have been subject to the $2 fee. However, the Department's research shows no wrecking facility has released a vehicle to the State in the past six years, so no revenue has been generated from the fee. Therefore

there is no cumulative impact from the fee decrease.

4. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to the Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901, no later than May 20, 2004. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Elois Johnson, Paralegal, at ejohnson@state.mt.us, no later than 5:00 p.m. May 20, 2004.

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 the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. A written request for hearing must be received no later than May 20, 2004.

6. If the Department 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 of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those facilities directly affected has been determined to be 18 based on the 176 licensed facilities.

7. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name 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 Department of Environmental Quality, 1520 E. Sixth Ave., PO Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to Elois Johnson, Paralegal, at ejohnson@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: *Jan P. Sensibaugh*
JAN P. SENSIBAUGH, Director

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State April 12, 2004.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of proposed New Rules I through III pertaining to criminal justice information	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 13, 2004, at 9:30 a.m., the Montana Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the adoption of proposed New Rules I through III pertaining to criminal justice information.

2. The Department of Justice 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 Justice no later than 5:00 p.m. on May 7, 2004, to advise us of the nature of the accommodation that you need. Please contact Ali Bovingdon, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; Fax (406) 444-3549; e-mail abovingdon@state.mt.us.

3. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS (1) "Criminal justice agency" means any federal, state, or local government agency that performs as its principal function the administration of criminal justice, including a fire agency or fire marshal that conducts criminal investigations of fires.

(2) "Initial arrest record" means the first record made by a criminal justice agency indicating the facts of a particular person's arrest and includes the initial facts associated with that arrest.

(3) "Initial offense report" means the first record of a criminal justice agency that indicates that a criminal offense may have been committed and includes the initial facts associated with that offense.

(4) "Initial report" means an initial offense report or the initial arrest record.

(5) "Juvenile records" means records maintained by youth court, department of corrections, or a criminal justice agency relating to a juvenile.

AUTH: 44-5-105, MCA
IMP: 44-5-105, MCA

NEW RULE II INITIAL REPORTS (1) Pursuant to the Criminal Justice Information Act, 44-5-101 through 44-5-602, MCA, initial reports are public.

(2) Initial reports should contain the following:

(a) the general nature of the charges against the accused;

(b) the location of the crime scene;

(c) the name, age and residence of the accused;

(d) the name of the victim, unless the alleged offense was a sex crime;

(e) information necessary to aid in the apprehension of the accused or to warn the public of any dangers that may exist;

(f) a request, if appropriate, for assistance in obtaining evidence;

(g) the facts and circumstances of an arrest, including the time and place, and the identity of the arresting officer or agency;

(h) the identity of a witness unless the witness is involved in the case only by virtue of their employment or has requested confidentiality;

(i) information contained within a public record; and

(j) the scheduling or result of any stage in the judicial process.

(3) Initial reports should not contain:

(a) driver's license numbers;

(b) social security numbers;

(c) medical records, including but not limited to, mental health records and records relating to drug and alcohol addiction or treatment; and

(d) with respect to the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, or 45-5-507, MCA, any information other than the location of the crime scene that may directly or indirectly identify the victim;

(e) with respect to the victim of any offense other than those described in (3)(d) who requests confidentiality, any information other than the location of a crime scene that may directly or indirectly disclose the address, telephone number, or place of employment of the victim or a member of the victim's family.

(4) Requests for initial reports should be reviewed on a case-by-case basis and nothing in this rule should be construed to preclude a balancing test between the public's right to know and any privacy interests that may exist.

AUTH: 44-5-105, MCA
IMP: 44-5-103, 44-5-301, MCA

NEW RULE III JUVENILE RECORDS (1) Subject to (2), the following juvenile records are available for public inspection:

(a) reports of preliminary inquiries;

(b) petitions;

(c) motions;

(d) filed pleadings;
(e) court findings;
(f) verdicts; and
(g) orders and decrees on file with the clerk of court.

(2) The juvenile records listed in (1) must be physically sealed three years after supervision for an offense ends. Once sealed, the records are no longer available for public inspection.

AUTH: 44-5-105, MCA
IMP: 44-5-103, 44-5-301, MCA

4. The new rules are necessary to provide guidance about what constitutes public criminal justice information pursuant to the Criminal Justice Information Act. Issues have arisen regarding what information should be contained in initial offense reports and initial arrest records. New Rules I and II will help resolve such issues. New Rule III provides similar guidance for juvenile records. The new rules will assist criminal justice agencies in responding to public requests for information.

5. Concerned persons may submit their data, views, or arguments concerning the proposed adoptions either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Ali Bovingdon, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; Fax (406) 444-3549; e-mail abovingdon@state.mt.us to be received no later than May 20, 2004.

6. Ali Bovingdon, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401, has been designated to preside over and conduct the hearing.

7. The Department of Justice 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 of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to the Office of the Attorney General, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620, faxed to the office at (406) 444-3549, emailed to abovingdon@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

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

By: /s/ Mike McGrath
MIKE MCGRATH
Attorney General

/s/ Ali Bovingdon
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State April 12, 2004.

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed adoption of NEW RULES I, II, III and IV pertaining to radiologist assistants, scope of practice, supervision, and adoption of a code of ethics	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 19, 2004, at 10:00 a.m., a public hearing will be held in room 438 of the Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry 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 Montana Board of Radiologic Technologists no later than May 12, 2004, to advise us of the nature of the accommodation that you need. Please contact Ms. Helena Lee, Board of Radiologic Technologists, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385, by facsimile to (406) 841-2305, or by e-mail to dlibsdrts@state.mt.us.

3. The proposed NEW RULES provide as follows:

NEW RULE I QUALIFICATIONS (1) To become licensed as a radiologist assistant (RA), an applicant shall:

(a) be a graduate of an educational program recognized by the American college of radiology (ACR), the American registry of radiologic technologists (ARRT), or the American society of radiologic technologists (ASRT);

(b) be certified by the certification board for radiologic practitioner assistant (CBRPA) or considered eligible for the CBRPA certification examination;

(c) maintain an active ARRT registration status;

(d) have current certification in advanced cardiac life support (ACLS) skills;

(e) furnish validation of participation in continuing education activities with a minimum 24 hours of continuing education credits in each biannual report;

(f) have a current Montana radiologic technologist license; and

(g) furnish to the board a certification letter requirement from the physician supervisor.

AUTH: 37-1-131, 37-14-202, MCA
IMP: 37-14-313, MCA

REASON: The Board of Radiologic Technologists has determined it is reasonably necessary to adopt this New Rule I to establish qualifications for licensure to implement Chapter 307, Laws of 2003 (HB 501), and to protect the public from potential harm. HB 501 requires that the Board provide for the licensure of radiologist assistants. Section 3 of the bill requires the Board to establish rules defining scope of practice and functions of the RA/RPA which are to be consistent with guidelines adopted by the American College of Radiology (ACR), the American Society of Radiologic Technologists (ASRT), the American Registry of Radiologic Technologists (ARRT) and the Certification Board for Radiologic Practitioner Assistant (CBRPA).

NEW RULE II SCOPE OF PRACTICE - SPECIFIC DUTIES AND FUNCTIONS (1) The RA/RPA shall evaluate the day's schedule of procedures with the supervising staff radiologist or the licensee's radiologist designate and determine where the licensee's skills will be best utilized.

(2) After demonstrating competency, the RA/RPA, when ordered to do so by the treating physician, may perform the following procedures under the general supervision of a staff radiologist as defined in [NEW RULE III]:

(a) fluoroscopic procedures (static and dynamic);

(b) arthrograms, pursuant to 37-14-301(3), MCA; and

(c) peripheral venograms, pursuant to 37-14-301(3), MCA.

(3) The RA/RPA shall evaluate and screen medical images for normal versus abnormal and provide a technical report to the supervising radiologist for review and final signatures.

(4) The RA/RPA shall assess and evaluate the physiologic and psychological responsiveness of each patient.

(5) The RA/RPA shall participate in patient management, including acquisition of additional imaging for completion of the exam and record documentation in medical records.

(6) The RA/RPA shall administer intravenous contrast media or glucagon, under the supervision of a radiologist or the attending physician pursuant to 37-14-301, MCA.

(7) The RA/RPA shall maintain current levels of education in emerging techniques, procedures and therapies by obtaining a minimum of 24 hours of continuing education biannually as required by ARRT, ACR, or ASRT and as approved by the board.

(8) The RA/RPA shall maintain values congruent with the code of ethics of the CBRPA and ARRT as well as adhering to national, institutional and/or departmental standards, policies, and procedures regarding the standards of care for patients.

AUTH: 37-1-131, 37-14-202, MCA
IMP: 37-14-202, 37-14-301, 37-14-313, MCA

REASON: The Board of Radiologic Technologists has determined this rule is reasonably necessary to comply with

and implement legislative provisions expressed by passage of Chapter 307, Laws of 2003 (HB 501), and to be consistent with guidelines already established by the American College of Radiology (ACR), the American Society of Radiologic Technologists (ASRT), and the American Registry of Radiologic Technologists (ARRT) as mandated by HB 501. The radiologist assistant is identified as an "advance-level technologist who works under the supervision of a radiologist to enhance patient care by assisting the radiologist in the diagnostic imaging environment" pursuant to section 37-14-102, MCA. The radiologist assistant will not interpret radiological examinations nor transmit observations other than to the supervising radiologist.

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

(1) "General supervision" means diagnostic procedures are furnished under the licensed radiologist's overall direction and control, but the licensed radiologist's presence is not required. The licensed radiologist must be available on a regularly scheduled basis to review the practice of the supervised individual, to provide consultation to the supervised individual, to review records, and to further educate the supervised individual in the performance of the individual's duties.

(2) "RA" means radiologic assistant. The term includes, and is synonymous with "RPA", which stands for radiologic practitioner assistant.

AUTH: 37-1-131, 37-14-202, MCA
IMP: 37-14-102, 37-14-202, 37-14-313, MCA

REASON: The Board of Radiologic Technologists has determined this rule is reasonably necessary to comply with legislative intent as expressed by passage of Chapter 307, Laws of 2003 (HB 501). The Board proposes this definition in conjunction with the professional understanding of terminology as expressed in the guidelines of the ACR, ASRT, and ARRT set out in Section three of HB 501 and as a requirement of compliance with those guidelines as expressed in HB 501.

NEW RULE IV ADOPTION OF CODE OF ETHICS (1) The board adopts and incorporates by reference the code of ethics adopted by the American registry of radiologic technologists (ARRT) which became effective in July 2002.

(2) Copies of the ARRT code of ethics may be obtained from the office of the board of radiologic technologists at 301 S. Park Ave., Helena, or P.O. Box 200513, Helena, Montana 59620-0513.

(3) The RA/RPA shall adhere to the ARRT code of ethics and principles.

(4) In addition to the ARRT code of ethics and principles, the conduct of the RA/RPA will be governed by the

following additional ethical and professional principles. The RA/RPA shall:

(a) adhere to all state and federal laws governing informed consent concerning the patient's health care;

(b) seek consultation with the supervising physician, other health providers, or qualified professionals having special skills, knowledge or expertise whenever the welfare of the patient will be safeguarded or advanced by such consultation. Supervision should include ongoing communication between the supervising physician and the RA/RPA regarding care of all patients;

(c) provide only those services for which they are qualified via education and demonstration of clinical competency and as set forth in this chapter;

(d) not misrepresent in any manner, either directly or indirectly, their clinical skills, educational experience, professional credentials, identity, or ability and capability to provide radiology health care services;

(e) place service before material gain; and

(f) carefully guard against conflicts of professional interest.

AUTH: 37-1-131, 37-14-202, MCA
IMP: 37-14-202, 37-14-313, MCA

REASON: The Board has determined that adoption of the ARRT code of ethics is necessary because HB 501, enacted by passage of Chapter 307, Laws of 2003, requires the board to adopt rules consistent with the guidelines of ARRT, ACR and ASRT. The ARRT Code of Ethics is uniformly interpreted and enforced by these three entities.

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 Board of Radiologic Technologists, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrts@state.mt.us and must be received no later than 5:00 p.m., June 1, 2004.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://discoveringmontana.com/dli/bsd under the Board of Radiologic Technologists rule notice section. The Department strives to make the electronic copy of this 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, 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, and that a

person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

6. The Board of Radiologic Technologists maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. Persons who wish to have their name included on 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 wants to receive notices regarding all Board of Radiologic Technologists administrative rulemaking proceedings or other administrative proceedings. Such written requests may be mailed or delivered to the Board of Radiologic Technologists, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdrts@state.mt.us or may be made by completing a request form at any rules hearing by the agency.

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

8. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF RADIOLOGIC TECHNOLOGISTS
JOHN ROSENBAUM, CHAIRMAN

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State April 12, 2004

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the proposed amendment of ARM 32.28.601 and 32.28.608; and the proposed adoption of NEW RULE I and NEW RULE II pertaining to starters and valets	) NOTICE OF PROPOSED AMENDMENT AND ADOPTION)) NO PUBLIC HEARING CONTEMPLATED)

TO: All Concerned Persons

1. On May 22, 2004, the Board of Horse Racing proposes to amend and adopt the above-stated rules.

2. The Board of Horse Racing 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 Board of Horse Racing no later than 5:00 p.m. on May 13, 2004, to advise us of the nature of the accommodation that you need. Please contact Marlys Stark, P.O. Box 200512, Helena, MT 59620-0512; phone: (406) 444-4287; TTD number: 1-800-253-4091; fax: (406) 444-4305; e-mail: mstark@state.mt.us.

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

32.28.601 GENERAL PROVISIONS (1) through (3)(j) remain the same.

(k) director of simulcast facility~~.~~;

(l) assistant starter; and

(m) valet.

(4) through (9) remain the same.

AUTH: Sec. 23-4-104, 23-4-202, ~~37-1-131,~~ MCA
IMP: Sec. 23-4-104, 23-4-201, 23-4-202, ~~37-1-131,~~ MCA

REASON: The proposed additions of the categories "assistant starter" and "valet" to the list of minor officials are necessary to ensure these positions are subject to all limitations and requirements of minor officials acting in an official capacity during a race meet, such as prohibition on wagering on a race at which the official is acting in an official capacity. The Board notes these positions have always functioned as minor officials, and should have been added to the minor official list previously. The proposed amendments will also delete a reference to Section 37-1-131, MCA, which refers only to licensing boards under the Department of Labor, which does not include the Board of Horse Racing.

32.28.608 STARTER (1) and (2) remain the same.

(3) All races shall be started by a starting gate approved by the board, except that with permission of the stewards, a race may be started without a gate. When a race is started with or without a gate, there shall be no start until, and no recall after, the assistant starter has dropped ~~his~~ the flag in answer to that of the starter.

(4) ~~With the sanction of the stewards, the starter may appoint his assistants, but neither he nor his assistants shall strike or use abusive language toward a jockey.~~ With the steward's approval, the starter shall approve and supervise assistant starters who have demonstrated they are adequately trained to safely handle horses in the starting gate. In emergency situations, the starter may appoint qualified individuals to act as substitute assistant starters, if the individuals are properly licensed as assistant starters by the board.

(5) The starter shall ensure that a sufficient number of assistant starters are available for each race, which shall include one assistant starter per horse in the race plus at least one assistant starter to shut the tailgates.

(6) The starter shall assign the starting gate stall positions to assistant starters and notify the assistant starters and the stewards of their stall positions no more than 30 minutes before post time for the first race. The assigned starting gate stall positions shall remain as assigned throughout the total duration of the day's races.

~~(5)~~ (7) Horses shall be schooled under the supervision of the starter or ~~his~~ the assistants and the starter shall designate the horses to be placed on the schooling list, a copy of which shall be posted in the office of the racing secretary.

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

~~(7)~~ (9) To ensure readiness and availability for emergencies or starting gate malfunctions, the starter shall remain at the starting gate location throughout the duration of the race day, except for reasonable comfort breaks. The starter shall report to the stewards any irregularities or disobedience to ~~his~~ the starter's orders and the stewards shall deal with it accordingly.

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

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-201, MCA

REASON: The proposed amendments to ARM 32.28.608 are necessary to change some procedures for starters. The Board has received complaints of improper practices occurring concerning the starter and the starting gate, which may affect the outcome of a race. The proposed amendments will impose new restrictions to alleviate the potentially abusive situations, including: 1. requiring the starter to approve only properly trained assistant starters; 2. requiring the starter to approve an adequate number of assistant starters;

3. requiring the starter to make the starting gate stall assignments for assistant starters no more than 30 minutes before post time for the first race of the day, to remain as assigned throughout the race day; 4. requiring the starter to remain at the starting gate throughout the duration of the race day. These changes will ensure the Board and the stewards remain in control of the starting gate, and thus ensure a fair start for all horses and the wagering public. Minor changes to (3), new (7) and new (9) will make the rule gender neutral.

4. The rules proposed for adoption provide as follows:

NEW RULE I ASSISTANT STARTER (1) An assistant starter is an individual hired by the racing association and supervised by the starter to handle horses in and around the starting gate, and ensure that each horse has a fair start.

(2) Assistant starters, with respect to an official race, shall not:

(a) handle or take charge of any horse in the starting gate without the express permission of the starter;

(b) impede the start of a race;

(c) slap, boot or otherwise dispatch a horse from the starting gate;

(d) strike or use abusive language to a jockey;

(e) receive money or other compensation, gratuity or reward, in connection with the running of any race or races; nor shall any person give to any assistant starter such money, compensation, gratuity or reward, except such compensation as salaries received from the race meet licensee; or

(f) wager, directly or indirectly, on any race in which they perform official duties.

(3) Assistant starters may also work as valets, if properly licensed as valets by the board.

(4) Assistant starters who are not also licensed as valets and performing valet functions during a particular race must remain at the starting gate location throughout the duration of the race day, except for reasonable comfort breaks. The assistant starters shall report all unauthorized activities to the starter.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-201, MCA

REASON: The proposed new rule will outline the duties and requirements of an assistant starter. Previously, the Board's rules did not contain language on duties of this important minor official's role. Consequently, the Board received complaints of improper practices occurring regarding assistant starters, which may potentially affect the outcome of a race. Therefore, the Board will specifically set forth the duties of an assistant starter, as well as listing prohibitions on improper activities, such as receipt of extra compensation to head a particular horse in a race, to

discontinue the perceived improper conduct. The rule will allow assistant starters to function as valets, if so licensed, and also require assistant starters who are not functioning as valets to remain at the starting gate throughout the race day for availability for emergencies or starter gate malfunctions.

NEW RULE II VALET (1) A valet is an individual hired by the racing association to prepare a jockey's equipment and saddle horses assigned to the valet prior to each race, and assist in unsaddling the same horse(s) after each race. There shall be at least one valet for every two horses in the maximum field size approved by the board.

(2) Valets shall be approved by the stewards and the starter as to their ability to perform their duties. Valets, with respect to an official race, shall not receive money or other compensation, gratuity or reward in connection with the running of any race or races, nor shall any person give to a valet such money, compensation, gratuity or reward, except such compensation as salaries received from the race meet licensee. Valets shall not wager, directly or indirectly, on any race in which they perform official duties.

(3) Valets providing tack cleaning and other related services for a jockey must present to the horsemen's bookkeeper and the stewards, prior to the start of a race meet, a written agreement signed by both the valet and jockey outlining what services will be performed and the total compensation for those services. Any agreed-upon services will be paid on a weekly basis.

(4) Valets who are also licensed as assistant starters may, when performing assistant starter functions during a particular race, move back and forth between the starting gate and the location at the track at which valet duties are required for that race. The valets shall report all unauthorized activities to the starter.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-201, MCA

REASON: The proposed new rule will outline the duties and requirements of a valet. Previously, the Board's rules did not contain language on duties of this important minor official's role. Consequently, the Board received complaints of improper practices occurring regarding valets, which may potentially affect the outcome of a race. Therefore, the Board will specifically set forth the duties of a valet, as well as listing prohibitions on improper activities such as receipt of extra compensation to perform valet services for a particular jockey in a race to discontinue the perceived improper conduct. The rule will also allow valets to function as assistant starters, if so licensed. Finally, the proposed new rule will require a written agreement between a valet and jockey as to services to be performed and the compensation for those services, to discontinue the perceived improper conduct

of some collection tactics for valet services in the past.

5. Concerned persons may present their data, views or arguments about the proposed amendments and adoptions in writing to the Board of Horse Racing, Attn: Marlys Stark, P.O. Box 200512, Helena, MT 59620-0512, or by faxing to (406) 444-4305, or by e-mailing to mstark@state.mt.us to be received no later than 5:00 p.m., May 20, 2004.

6. If persons who are directly affected by the proposed amendments and adoptions wish to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The request for hearing and comments must be received no later than 5:00 p.m., May 20, 2004.

7. If the board receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 130 based upon the 1,300 licensees in Montana in 2003.

8. An electronic copy of this proposal notice is available through the department’s site at www.liv.state.mt.us.

9. The Board of Horse Racing maintains a list of persons interested in the Board's rulemaking proceedings. 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 the Board of Horse Racing. Such written request may be mailed or delivered to Marlys Stark, Department of Livestock, Board of Horse Racing, P.O. Box 200512, Helena, MT 59620-0512.

10. The bill sponsor notification requirements of 2-4-302, MCA, do not apply.

BOARD OF HORSE RACING, DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Carol Grell Morris
Carol Grell Morris,
Rule Reviewer

Certified to the Secretary of State April 12, 2004.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of new rules I through LXXVI pertaining to the outdoor behavioral program	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Interested Persons

1. On May 12, 2004, at 1:30 p.m., a public hearing will be held in the auditorium of the Sanders Building, 111 Sanders, Helena, Montana to consider the proposed adoption of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 5, 2004, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

RULE I DEFINITIONS The following definitions apply to this subchapter:

(1) "Administrative office" means the office where business operations, public relations and management procedures take place.

(2) "Administrator" means the person designated on the facility application or by written notice to the department as the person responsible for the daily operation of the facility and for the daily resident care provided in the facility.

(3) "Case plan" means an individualized plan of services to be provided to each youth, based on his or her identified treatment needs, designed to help him or her reach treatment goals.

(4) "Child abuse or neglect" is that as defined at 41-3-102, MCA.

(5) "CPR" means cardiopulmonary resuscitation.

(6) "Contraband" means any item possessed by a youth or found on the program's premises that is illegal by law or expressly prohibited by the program. Such items include, but are not limited to, weapons, illegal or unauthorized drugs, drug paraphernalia, intoxicants and flammable items.

(7) "Debrief" means to interview youth and staff members following the use of physical restraint, or following any other incident or occurrence in which it is necessary or helpful for

the program to obtain information from youth and staff members.

(8) "Department" means the Montana department of public health and human services.

(9) "Direct care staff" means program personnel who directly participate in the care, supervision and guidance of youth in an outdoor behavioral program, including the field director, senior field staff and field staff.

(10) "Expedition" means an excursion undertaken for specific treatment purposes that takes the youth away from the field office.

(11) "Expedition camp" means a nonpermanent campsite. Youth and staff may move from one expedition camp to another when on expedition.

(12) "Field office" means the office where all coordination of expedition operations takes place.

(13) "Global positioning system (GPS) receiver" means a receiver which receives signals from a network of satellites known as the global positioning system, or GPS, which identifies the receiver's location by:

(a) latitude;

(b) longitude; and

(c) altitude to within a few hundred feet.

(14) "High adventure activity" means an outdoor activity provided to youth for the purposes of behavior management or treatment and which requires specially trained staff and special safety precautions to reduce the possibility of an accident or injury.

(15) "Illegal contraband" means items or substances the possession of which by a youth constitute a violation of state or federal law.

(16) "Lead clinical staff member (LCS)" is a licensed clinical psychologist, a licensed clinical social worker or a licensed professional counselor. The LCS is responsible for the supervision and overall provision of treatment services to youth in the program.

(17) "Leave no trace principles" means wilderness and land use ethics designed to minimize the impact of visitors to back country areas.

(18) "Licensed health care professional" is defined at 50-5-101, MCA.

(19) "Mechanical restraint" is any object or apparatus, device or contraption applied or affixed to the youth to limit movement, and includes, but is not limited to:

(a) handcuffs;

(b) leg irons;

(c) soft restraints such as cloth ties for limbs or waist, safety vests, hand mitts and protection nets;

(d) restraint chairs; or

(e) straight jackets.

(20) "Near miss" means an unplanned, unforeseen or potentially dangerous situation where safety was compromised but that did not result in injury.

(21) "Physical assist" is a behavioral control technique by which a staff member physically aids or supports youth who

are not physically resisting.

(22) "Placing agency" means any corporation, partnership, association, firm, agency, institution or person who places or arranges for placement of any youth with a program.

(23) "Program" means outdoor behavioral program as defined at 50-5-101(40), MCA.

(24) "Residential outdoor services" means services provided by a program to youth at designated stationary sites including permanent buildings where the youth reside.

(25) "Seclusion" is a behavioral control technique involving locked isolation. The term does not include time outs.

(26) "Serious incident" means:

(a) a suicide attempt;

(b) the excessive use of physical force by staff;

(c) assault of a youth by residents or staff, including sexual assault;

(d) injury to a youth which requires medical attention;

(e) the death of a youth; or

(f) known or suspected abuse or neglect of a youth by staff or youth.

(27) "Solo experience" means separation of a youth from the group as part of the outdoor therapeutic process, not including a time out.

(28) "Time out" means imposed separation of a youth from any group activity or contact as a means of behavior management.

(29) "Wilderness first responder" means a licensed first responder with the medical training course for outdoor professionals as offered by the national association of search and rescue.

(30) "Youth" means a youth 13 through 18 years of age, who may be admitted to or is a participant in an outdoor behavioral program.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE II LICENSE APPLICATION PROCESS (1) Application for a license accompanied by the required fee must be made to the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(2) The application for a license must be made on forms provided by the department and shall include full and complete information as to the identity of:

(a) each officer and director of the corporation, if organized as a corporation;

(b) each general partner if organized as a partnership or limited liability partnership;

(c) name of the administrator and administrator's qualifications;

(d) name, address and phone number of the management company if applicable;

(e) physical location address, mailing address and phone

number of the program; and

(f) maximum number of beds in the program.

(3) The application for a license must also include the program management policies such as:

(a) the program statement and description of services;

(b) policies for decision making, supervision of staff and consultation;

(c) program strategies, policies and procedures;

(d) case review policy;

(e) admission and discharge policies and procedures;

(f) policies and procedures for support services;

(g) youth's grievance procedure;

(h) transportation policies and procedures;

(i) policies for personnel and financial records; and

(j) any other policies required by these rules.

(4) The application for a license must also include the placement agreement intended to be used by the program.

(5) Every program shall have a distinct identification or name and shall notify the department in writing within 30 days prior to changing such identification or name.

(6) Each program shall promptly report to the department any plans to relocate the program at least 30 days prior to such a move.

(7) The current program license must be publicly displayed at the administrative office.

(8) In the event of a change of ownership, the new owners shall provide the department the following:

(a) a completed application with fee;

(b) a copy of the fire inspection conducted within the past year;

(c) policies and procedures as prescribed in (3), or if applicable, a written statement indicating that the same policies and procedures will be used;

(d) a copy of the placement agreement as outlined in (4); and

(e) documentation of compliance with [RULE V].

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE III LICENSE RESTRICTIONS (1) A license is not subject to sale, assignment or other transfer, voluntary or involuntary.

(2) A license is valid only for the premises for which the original license was issued.

(3) The license remains the property of the department and shall be returned to the department upon closing or transfer of ownership. The address for returning the license is Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE IV LICENSE DENIAL, SUSPENSION, RESTRICTION, REVOCATION, OR REDUCTION TO PROVISIONAL STATUS AND HEARING PROCEDURES (1) The department, after written notice to the applicant, may deny an application for licensure upon finding that the applicant has not met the minimum requirements for licensure established by this subchapter, or upon finding that the applicant has made any misrepresentation to the department, either negligently or intentionally, regarding any aspect of its operations or facility.

(2) The department, after written notice to a licensed program, may suspend, restrict, revoke or reduce to a provisional status a license upon finding that the program is not in substantial compliance with the minimum requirements for licensure established by this subchapter. Suspension or revocation may be immediate if:

(a) the department is denied access to the program, to any youth placed in the program by the department, or to any program records;

(b) the program has made any misrepresentation to the department, either negligently or intentionally, regarding any aspect of its operations or facility;

(c) the program fails to report known or suspected child abuse or neglect as required by 41-3-201, MCA;

(d) the initial investigation of a report of child abuse or neglect results in reasonable cause to suspect that a youth in the program may be in danger of harm;

(e) the program or any member of its staff has been named as the perpetrator in a substantiated report of abuse or neglect;

(f) the program or any member of its staff has violated a provision of this subchapter that resulted in child abuse or neglect; or

(g) it is determined on the basis of a department or law enforcement investigation that the program or any member of its staff may pose a risk or threat to the health or welfare of a youth placed in the program.

(3) Any person denied licensure under the provisions of this subchapter, or whose license has been suspended, restricted, revoked or reduced to a provisional status, may request a hearing as provided in ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

AUTH: Sec. 50-2-220, MCA
IMP: Sec. 50-2-220, MCA

RULE V ADMINISTRATOR QUALIFICATIONS (1) Each program shall employ an administrator. The administrator is responsible for operation of the program at all times and shall ensure 24-hour supervision of the residents. The program administrator is the person ultimately responsible for ensuring that the program is in compliance with applicable licensing rules and ensuring that staff are familiar with and comply with all program

policies and procedures.

(2) The administrator shall meet, at a minimum, the following qualifications:

(a) a bachelors degree in a relevant discipline;

(b) completion of a minimum of 30 semester or 45 quarter hours of education in recreational therapy or related field or one year outdoor youth program field experience;

(c) two years experience working with youth and two years experience in staff supervision and administration;

(d) completion of initial staff training; and

(e) have evidence of at least 16 contact hours of annual continuing education relevant to the individual's duties and responsibilities as administrator of the program.

(3) A staff member must be designated to oversee the operation of the facility during the administrator's absence. The administrator or designee shall be in charge, on call and physically available on a daily basis as needed, and shall ensure there are sufficient, qualified staff so that the care, well being, health and safety needs of the residents are met at all times.

(a) A designee shall:

(i) be age 18 or older; and

(ii) have demonstrated competencies required to assure protection of the safety and physical, mental and emotional health of the residents.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE VI ADMINISTRATIVE POLICIES AND PROCEDURES (1) The program shall have established policies and organizational plans clearly defining legal responsibility, administrative authority and responsibility for services to program participants and the community.

(2) The program shall have written policies for personnel and financial records. The policies shall be furnished to the department with the initial license application.

(3) The program shall have written position descriptions for all employees which include a description of duties, responsibilities, limitations of authority, and principal measures of accountability and performances.

(4) The program shall develop policies and procedures for screening, hiring and assessing staff which include practices that assist the employer in identifying employees that may pose a risk or threat to the health, safety or welfare of any resident and provide written documentation of findings and the outcome in the employee's file.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE VII QUALITY ASSESSMENT (1) The program shall implement and maintain an active quality assessment program for improving policies, procedures and services. At a minimum, the

quality assessment program must include procedures for:

(a) conducting youth satisfaction surveys at least annually;

(b) maintaining records on the occurrence, duration and frequency of physical assists and physical restraints used; and

(c) reviewing, on an ongoing basis, serious incident reports, near misses, grievances, complaints, medication errors, and the use of physical restraints with special attention given to identifying patterns and making necessary changes in how services are provided.

(2) The program shall prepare and maintain on file an annual report of improvements made as a result of the quality assessment activities specified in this rule.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE VIII CONFIDENTIALITY OF RECORDS AND INFORMATION (1) All records maintained by a program and all personal information made available to a program pertaining to an individual youth must be kept confidential, and are not available to any person, agency or organization except as specified in (2) through (4).

(2) All records pertaining to an individual youth are available upon request to:

(a) the youth's parent, guardian, legal custodian, or attorney absent specific and compelling reasons for refusing such records;

(b) a court with continuing jurisdiction over the placement of the youth or any court of competent jurisdiction issuing an order for such records;

(c) a mature youth to whom the records pertain, absent specific and compelling reasons for refusing specific records; or

(d) an adult who was formerly the youth in care to whom the records pertain, absent specific and compelling reasons for refusing such records.

(3) All records pertaining to individual youth placed by the department are available at any time to the department or its authorized representatives.

(4) Records pertaining to individual youth not placed by or in the custody of the department must be available to the department for the purposes of licensing, relicensing or investigating the program.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE IX REPORTS (1) The program shall submit to the department, upon its request, any reports required by federal or state law or regulation.

(2) The program shall report any of the following changes in writing to the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401

Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953 prior to the effective date of:

(a) a change of administrator;

(b) a change in location;

(c) a change in the name of the program; or

(d) any significant change in organization, administration, purposes, programs, or services.

(3) The program shall report any violation of the requirements of this subchapter to the department within two business days.

(4) Runaways must be reported immediately to law enforcement and within the next working day to the agency or person who placed the youth.

(5) Disasters or emergencies which require closure of a residence unit shall be reported to the department within the next working day.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE X CHILD ABUSE OR NEGLECT AND SERIOUS INCIDENTS

(1) Each program staff member and employee shall read and sign a statement clearly defining child abuse and neglect and explaining the staff member's responsibility to report all known or suspected incidents of child abuse or neglect.

(2) Any program staff member or employee who knows or has reasonable cause to suspect that an incident of child abuse or neglect has occurred shall report within 24 hours the known or suspected incident to the program administrator, or a person designated by the program administrator, and to the state child abuse hotline (1 (866) 820-5437) as required by 41-3-201, MCA. The program must fully cooperate with any investigation conducted as a result of the report.

(3) Each program shall have written procedures for handling any suspected incident of child abuse or neglect including:

(a) a procedure for ensuring that the staff member involved does not continue to provide direct care until an investigation is completed; and

(b) a procedure for taking appropriate disciplinary measures against any staff member involved in an incident of child abuse or neglect, including, but not limited to:

(i) termination of employment;

(ii) retraining of the staff member; or

(iii) any other appropriate action by the program geared towards the prevention of future incidents of child abuse or neglect.

(4) Any serious incident involving a youth must be reported within the next working day to the person or agency which placed the youth and to the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(5) The report must be in writing, and must include:

(a) the date and time of the incident;
(b) the youth and any staff member(s) involved;
(c) the nature of the incident; and
(d) a description of the incident and the circumstances surrounding it.
(6) A copy of the report must be maintained at the program.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XI STAFF (1) A program shall have written personnel policies covering the following items:
(a) job qualifications;
(b) job descriptions;
(c) supervisory structure;
(d) fringe benefits;
(e) insurance;
(f) hours of work; and
(g) performance evaluations.
(2) A program shall maintain records for each employee regarding the following:
(a) application for employment;
(b) reports from references;
(c) record of orientation and ongoing training;
(d) reports of health examinations;
(e) periodic performance evaluations;
(f) copy of current licenses and certifications; and
(g) any other employee records required by this subchapter.
(3) All program staff shall meet the following general qualifications:
(a) understand the purpose of the program and be willing to carry out its policies and programs;
(b) be physically, mentally, and emotionally competent to care for youth; and
(c) be in good general health.
(4) New employees must receive orientation and training in areas relevant to the employee's duties and responsibilities, including:
(a) an overview of the facility's policies and procedures manual in areas relevant to the employee's job responsibilities;
(b) a review of the employee's job description;
(c) services provided by the facility; and
(d) youth rights as discussed in [RULE XXXI].
(5) A "personal statement of health for licensure form" provided by the department must be completed for each person subject to the requirements of this rule. The form must be submitted to the department with the initial application for licensure and annually thereafter. The "personal statement of health for licensure form" is available at Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(6) The program shall employ, train and supervise an adequate number of staff necessary to ensure proper care, treatment and safety of the residents.

(7) No staff member, intern, volunteer or other person having direct contact with the youth in the program shall conduct themselves in a manner which poses any potential threat to the health, safety or well being of the youth in care.

(8) Any staff member, intern, volunteer or other person having direct contact with the youth whose behavior or health status endangers the residents may not be allowed at the program.

(9) The personal references of all staff must be verified and documented in writing.

(10) Program volunteers and interns shall:

(a) be provided orientation and initial training procedures. The training must include orientation on all program policies and procedures;

(b) follow written policies and procedures developed by the program defining the responsibilities, limitations and supervision of volunteers and interns;

(c) not provide direct care or supervise youth at any time;

(d) not be included in the staff to youth ratios; and

(e) be under the direct and constant supervision of program staff.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XII PROGRAM PROFESSIONAL STAFF AND QUALIFICATIONS

(1) Each program shall employ or contract with professionals to serve as program professional staff members. Program professional staff members must have knowledge of the physical and emotional demands of the program and provide professional services including, but not limited to:

(a) admission evaluations;

(b) case plan development;

(c) assessments;

(d) treatment; and

(e) rehabilitation.

(2) At a minimum, each program professional staff must consist of:

(a) a licensed physician;

(b) a licensed health care professional. If a licensed physician is selected as the licensed health care professional, then the program must select a different licensed physician for (2)(a);

(c) a licensed mental health professional who may be either a licensed clinical psychologist, a licensed clinical social worker or a licensed clinical professional counselor; and

(d) a licensed addiction counselor.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XIII PROGRAM EXPEDITION FIELD DIRECTOR QUALIFICATIONS

(1) The staff of each program expedition must include a field director.

(2) The field director shall be primarily responsible for:

(a) the quality of the field activities;

(b) coordinating field operations;

(c) supervising direct care staff;

(d) managing the field office;

(e) ensuring compliance with applicable licensing rules; and

(f) ensuring that staff members are familiar with all program policies and procedures.

(3) The field director shall meet, at a minimum, the following qualifications:

(a) a bachelors degree in a relevant discipline and a minimum of 30 semester or 45 quarter hours of education in recreational therapy or in a related field, or one year outdoor youth program field experience;

(b) a minimum of 40 24-hour field days of program experience or equivalent experience in outdoor programs documented in the individual's personnel file;

(c) be capable of preparing reports required by this subchapter, documenting interactions of youth and staff, and ensuring compliance with applicable licensing rules;

(d) hold a first response license or equivalent and have additional wilderness first responder training; and

(e) completion of an initial staff training.

(4) If qualified, the administrator may serve as field director.

(5) Each program shall have a senior field staff member working directly with each group of program youths. Each senior field staff member shall meet the following minimum qualifications:

(a) be at least 22 years of age;

(b) have an associate degree or high school diploma with 30 semesters or 45 quarter hours education and training or comparable experience and training in a field related to recreation and adventure activities;

(c) have six months outdoor youth program field experience or comparable experience which shall be documented in the individual's personnel file;

(d) hold a wilderness first responder license or equivalent and have additional wilderness first responder training; and

(e) have completed initial staff training.

(6) Field staff working directly with the youth shall meet, at a minimum, the following qualifications:

(a) be at least 22 years of age;

(b) have a high school diploma or equivalent;

(c) have completed initial staff training; and

(d) be certified in CPR annually and currently certified in first aid.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XIV PROGRAM STAFF BACKGROUND CHECKS (1) The administrator, staff, volunteers and interns must have a state criminal, a child protective services/adult protective services and if applicable, a tribal criminal and child protective services background check conducted.

(a) The department may not grant approval or licensure nor allow a license if the administrator, staff member, volunteer or intern has been convicted by a court of competent jurisdiction of a felony or misdemeanor involving:

(i) child abuse or neglect;

(ii) spousal abuse;

(iii) a crime against a child or children (including child pornography); or

(iv) a crime involving violence, including rape, sexual assault or homicide, but not including other physical assault or battery.

(b) The department shall not grant approval or licensure nor allow a license if any administrator, staff member, volunteer or intern has, within the last five years, been convicted by a court of competent jurisdiction of a felony or misdemeanor involving:

(i) physical assault;

(ii) battery; or

(iii) a felony drug related offense.

(2) The administrator, staff member, volunteer or intern who is charged with a crime involving children or physical or sexual violence against any person or any felony drug related offense and awaiting trial may not provide care or be present in the facility pending the outcome of the criminal proceeding.

(3) No administrator, staff member, volunteer or intern shall have been named as a perpetrator:

(a) in a substantiated report of child abuse or neglect;

(b) in a report substantiating abuse or neglect of a person protected under the Montana Elder and Developmentally Disabled Abuse Prevention Act; or

(c) of a person protected by a similar law in another jurisdiction.

(4) No administrator, staff member, volunteer or intern shall be identified through a department licensing investigation to have negligently or intentionally violated a licensing regulation which results in child abuse or neglect.

(5) The program is responsible for assuring that the persons covered by this subchapter have met these requirements before providing care.

(6) No staff member, aide, volunteer or other person having direct contact with the youth in the facility shall pose any potential threat to the health, safety and well being of the youth in care.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XV STAFF TRAINING (1) A program shall have written policies, procedures and training curriculum regarding minimum requirements for initial and ongoing training.

(2) All direct care staff shall complete a minimum of 40 hours of initial staff training.

(3) Initial staff training must consist of the following minimum requirements:

(a) the program's policy, procedures, organization and services;

(b) mandatory child abuse reporting laws;

(c) crisis intervention methodologies;

(d) fire safety, including emergency evacuation routes;

(e) confidentiality;

(f) first aid and CPR;

(g) suicide prevention;

(h) report writing including the development and maintenance of logs and journals; and

(i) therapeutic de-escalation of crisis situations and passive physical restraint techniques to ensure the protection and safety of the youth and staff. Training must include the use of physical and non-physical methods of managing youth and must be updated, at least every 12 months, to ensure that necessary skills are maintained.

(4) Initial staff training shall be completed and documented before the staff person may count in the youth/staff ratio as specified in [RULE XVI and LXVII].

(5) The program shall provide ongoing training for staff to maintain certifications and improve proficiency in knowledge and skills. Training must be a minimum of 20 hours annually.

(6) All staff training must be documented and kept on file for each administrator, staff, intern and volunteer.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XVI YOUTH/STAFF RATIOS (1) A program shall maintain the following minimum staff ratios:

(a) Youth/staff ratio must be no more than 4:1 each day for a 15-hour period beginning at, or between, 7 a.m. and 7:30 a.m., (or beginning at, or between, some other reasonable morning half hour which is approximately 15 hours prior to the bedtime of the youth), when youth are in care.

(b) Youth/staff ratio may not be more than 8:1 each night for a nine-hour period beginning no earlier than 15 hours from the time daytime staffing of 4:1 starts.

(2) A program must use the actual number of youth in care each day to compute the youth/staff ratio.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XVII THERAPEUTIC TREATMENT PROGRAM (1) A program shall provide therapeutic treatment to youth.

(2) A program shall appoint one or more lead clinical

staff (LCS) members from the licensed mental health professionals of the program as professional staff.

(3) Each LCS shall be responsible for no more than 16 youth.

(4) The LCS must oversee all therapeutic treatment needs for the youth which at a minimum shall consist of:

(a) one individual treatment session per week per youth;

(b) two group treatment sessions per week per youth;

(c) one treatment team meeting per week per youth; and

(d) family therapy when appropriate.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XVIII SOCIAL SERVICES (1) A program shall employ an adequate number of trained professionals to provide the following services for each youth in care:

(a) plan for a youth's admission, coordinate the case plan, negotiate for the necessary resources for the youth, and prepare the youth for discharge and return to the family or other placement;

(b) serve as advocate for the youth and liaison with the family, the referring party and the community;

(c) prepare and maintain all required records and reports regarding the youth;

(d) provide post-placement plans and services and make the necessary referrals;

(e) assist the youth and staff to adjust to the youth's placement; and

(f) record the youth's reactions to the program, school, other youth, staff and family, and participate in staff discussion regarding progress and plans for the youth.

(2) Those persons providing social services shall meet the following qualifications in addition to the general qualifications for direct care staff:

(a) have a bachelors degree in a behavioral science and experience in areas related to youth care or services;

(b) have two years of equivalent social services experience for each year of college education; or

(c) have an equivalent educational background with development of the necessary skills in social services.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XIX CARE AND GUIDANCE (1) A program shall provide to each youth in the program the following:

(a) appropriate personal care, supervision and attention;

(b) opportunities for educational, social and cultural growth through suitable reading materials, toys, activities and equipment; and

(c) opportunities to associate with peer groups in school and community settings.

(2) A program shall ensure the following practices:

(a) cooperation with the placing agency and participation in case conferences; and

(b) cooperation with the placing agency in arranging for contact with each youth's own family when appropriate.

(3) A program shall encourage youth to continue any socially appropriate activities, classes or participation in clubs or groups. Each youth must be allowed to become voluntarily involved in community programs that meet his or her needs, interests and abilities.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XX NUTRITION (1) A program shall serve three regular, well balanced meals per day and snacks. The meals and snacks must be appropriate to the nutritional needs of the youth and must include the four basic food group requirements.

(2) Special diets must be provided for youths as ordered in writing by a licensed health care professional. Such orders must be kept on file by the program.

(3) Copies of menus of the food actually served must be kept on file for one month and must be available for inspection.

(4) All food must be transported, stored, covered, prepared and served in a sanitary manner.

(5) Use of home canned products is prohibited unless the product has been commercially approved.

(6) Hands must be washed with warm water and soap before the handling of food.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXI RELIGION AND CULTURE (1) The program shall provide youth with a reasonable opportunity to practice their respective religions. Youth must be permitted to attend religious services of their choice in the community and to receive visits from representatives of their respective faiths.

(2) The program shall give encouragement and opportunity to each youth to identify with his or her cultural heritage.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXII PERSONAL NEEDS (1) The program shall assure that each youth has his or her own clothing suitable to the youth's age and size and comparable to the clothing of other youth in the community.

(2) Youth must have some choice in the selection of their clothing.

(3) A program shall provide necessary supplies and train youth in personal care, hygiene and grooming.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXIII PRIVACY AND INDIVIDUALISM (1) A program shall allow youth to have privacy.

(2) A program shall provide a separate bed, separate storage space for clothing and personal articles, and a place for each youth to display his or her socially appropriate creative works and symbols of identity.

(3) Each youth must be provided with access to a quiet area where he or she can be alone when appropriate.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXIV MONEY (1) Money earned by a youth or received as a gift or allowance must be part of the youth's personal property and accounted for separately from the program funds.

(2) If the program is partly supported by institutional production on a commercial basis, compliance with state and federal child labor laws and minimum wage laws must be assured.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXV TRAINING AND EMPLOYMENT (1) For youth age 16 and older a program shall assist in:

(a) preparing youth for economic independence; and

(b) obtaining the skills necessary for employment as determined to be appropriate to meet the individual's needs. Such skills include:

(i) completing applications;

(ii) personal appearances for employment situations;

(iii) attitudes toward employment; and

(iv) interviewing for jobs.

(2) A program shall distinguish between tasks which youth are expected to perform as part of living together, jobs to earn spending money and jobs performed for vocational training. Youth in care may not be used as employees of the program without prior approval of the department.

(3) Youth may be given an age appropriate, non-vocational work assignment within the youth's capabilities as a constructive experience. The work assignment must be in compliance with all state and federal labor laws.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXVI YOUTH ORIENTATION (1) A program shall have a written orientation policy for admission to the program including:

(a) a procedure for ensuring that each youth receives a personal orientation to the program as soon as appropriate but not later than 12 hours after admission;

(b) inventory of each youth's belongings;

(c) behavioral expectations;

(d) information on privilege systems;

(e) health and safety procedures;
(f) program rules;
(g) information on intrusive measures; and
(h) emergency evacuation procedures, including escape routes.

(2) Documentation that is signed by both the youth and the staff person(s) conducting the orientation must be placed in the youth's file.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXVII PLACEMENT AGREEMENTS (1) When a youth is admitted to a program, the program shall enter into a written placement agreement with the placing agency.

(2) The placement agreement must set forth the terms of the youth's placement, the responsibilities of the program, the placing agency's responsibilities and, when appropriate, the parent's responsibilities.

(3) No youth from out-of-state shall be accepted into the program without the approval of the interstate compact administrator pursuant to 41-4-101 through 41-4-109, MCA.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXVIII EDUCATION (1) A program shall provide an educational program appropriate to the needs of each youth and in compliance with compulsory school attendance laws. However, no youth shall receive special education services until a child study team (CST) has performed an appropriate comprehensive assessment which yields evidence that the youth has learning and/or behavioral problems requiring a specialized service not offered by the regular school program. Any youth who is receiving special educational services must have an individualized education program (IEP) in accordance with ARM 10.16.3340.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXIX RECREATION (1) The program may have an on grounds recreation program that is operated by the program's staff. However, when available, the program shall provide the youth access to community recreation and cultural events when they are appropriate to the youth's needs, interests and abilities.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXX YOUTH CASE RECORDS (1) A program shall maintain a written case record for each youth which must include administrative, treatment and educational data from the time of

the youth's admission until the time the youth leaves the program. A youth's case record must include the following:

(a) the name, sex and birth date of the youth;

(b) the name, address and telephone number of the parent(s) or guardian of the youth;

(c) date of admission and placing agency;

(d) if the youth was not living with his or her parents prior to admission, the name, address, telephone number and relationship to the youth of the person with whom the youth was living;

(e) all documents related to the referral of the youth to the program as provided by the placing agency;

(f) documentation of the current custody and legal guardianship as provided by the placing agency;

(g) the youth's court status, if applicable;

(h) consent forms signed by the parents or guardian prior to placement that allow the program to authorize all necessary medical care, routine tests, immunization and emergency medical or surgical treatment;

(i) health records including medical history and vaccination record as provided by the placing agency;

(j) education records and reports;

(k) treatment or clinical records and reports;

(l) records of special or serious incidents;

(m) case plans and related material;

(n) social summary current to date of placement;

(o) report stating reason for placement;

(p) quarterly progress reports on the youth's reaction to the placement and services provided;

(q) date of discharge, reason for discharge, and the name, telephone number and address of the person or agency to whom the youth was discharged; and

(r) all other youth records and documentation as required by these rules.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXI YOUTH RIGHTS (1) A program shall develop and maintain a youth's rights policy that supports and protects the fundamental human, civil, constitutional and statutory rights of all youth. These rights shall include, but are not limited to the following:

(a) each youth has the right to be free from abuse, neglect and unnecessary physical or chemical restraint;

(b) if the program operates during the school year, every youth has the right to educational services in accordance with Montana state law;

(c) the dignity of every youth and family must be recognized and respected in the delivery of services;

(d) each youth has the right to receive care according to individual need;

(e) service must be provided within the most appropriate setting;

(f) each youth has the right to personal privacy, and the program must allow privacy for each youth when not contrary to treatment and safety of the youth;

(g) contact with the family will be maintained by mail and phone, if accessible, as long as this contact is not contrary to the treatment and safety needs of the youth; and

(h) each youth has the right to have his or her opinions and recommendations considered and documented in the development of his or her case plan.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXII PHYSICAL EXAMINATION (1) All physical examinations must be completed by an appropriate licensed health care professional. A youth must have a physical examination:

(a) within 30 days prior to admission into the program;

(b) at least annually after entering the program; and

(c) at any time when circumstances indicate that an updated examination would be appropriate.

(2) The result of the physical examination must be recorded on a standard form provided by the program. The form shall clearly identify to the examining professional the type and extent of physical activity which the youth will be asked to participate in.

(3) The physical examination must include:

(a) a complete blood count (CBC), a urinalysis and an electrolyte screen;

(b) a pregnancy test for each female if deemed necessary by the health care professional conducting the physical examination;

(c) a physical assessment to determine the youth's fitness for the climate and temperature in which the youth will be participating and the youth's age, weight and physical condition;

(d) a determination of whether detoxification is indicated for the youth prior to entrance into the program;

(e) identification of any physical problems which would limit the youth's physical activity;

(f) identification of any special care which the youth will need;

(g) a record of immunizations as defined in ARM 37.114.701 through 37.114.716. In addition the immunization record must include:

(i) evidence of hepatitis A series. If the record indicates no hepatitis A series, then the series must be started immediately. The hepatitis A series consists of two injections given six months apart;

(ii) evidence of hepatitis B series. If the record indicates no hepatitis B series, then the series shall be started immediately. The hepatitis B series consists of three shots, including one initial shot, one shot given at one month or two months after the initial shot, and one shot given six months after the initial shot;

(h) a history of communicable diseases and serious illnesses or operations the youth has had;

(i) identification of any known drug reactions and allergies;

(j) identification of medications being taken during the six months prior to the examination, and a description of any possible special needs due to the use of medication in an outdoor, high impact environment;

(k) identification of any necessary special dietary requirements; and

(l) identification of any hereditary health issues that may affect the youth.

(4) If a youth is in a risk group for circulatory or auto-immune syndrome disorder, written approval must be included on the physical examination form by the licensed health care professional for participation in the program.

(5) The licensed health care professional conducting the examination must give written approval on the examination form for participation in the program, taking into consideration the factors specified in this rule and any other factors the professional deems to be relevant to the youth's participation in the program. The licensed health care professional conducting the physical examination must give separate written approval on the examination form for the youth's participation in the following situations or activities:

(a) strenuous exercise;

(b) exposure to cold temperatures; and

(c) activities that may occur in altitudes over 5000 feet.

(6) A program may not admit a youth who is not approved by the examining licensed health care professional for admission to the program. The program shall comply with all restrictions or limitations placed on a youth by the examining professional.

(7) The original physical examination form must be maintained at the field office and a copy must be carried by staff in a waterproof container when the youth is away from the field office. The physical examination form must be maintained in a manner that assures the confidentiality of all medical and identification information.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXIII ASSESSMENTS (1) A program shall have written admission and assessment policies, procedures and forms.

(2) Prior to enrollment in the program, an admission assessment must be done for each youth by a program professional staff member. This admission assessment must include a review of the youth's social history, psychological history, medical history and physical examination. The assessment must review the following topics:

(a) allergies;

(b) medications;

(c) a record of immunizations as defined in ARM 37.114.701, 37.114.702, 37.114.704, 37.114.705, 37.114.708,

37.114.709, 37.114.710, 37.114.715 and 37.114.716;

(d) hospitalizations;

(e) medical diagnoses;

(f) medical problems that run in the family;

(g) pregnancy status and any complications;

(h) special dietary needs;

(i) illnesses;

(j) injuries;

(k) dental problems;

(l) mental health issues;

(m) emotional problems;

(n) ongoing medical care needs;

(o) history of aggressive or violent behavior;

(p) substance abuse history;

(q) sexual history or behavior patterns that may place the youth or other youth at risk;

(r) known or suspected suicide or self-injury attempts or gestures;

(s) emotional history indicating a predisposition for self-injury or suicide; and

(t) history of fire setting.

(3) A program professional staff member shall determine at the time of admission if the youth is currently appropriate for placement in the program. The youth may not be admitted if the youth:

(a) is determined to be an unsuitable candidate because of a limiting medical factor;

(b) requires secure psychiatric attention;

(c) requires secure detention; or

(d) is an imminent risk of being a danger to self or others.

(4) A subsequent assessment must be done before the youth leaves for the expedition portion of the program. The subsequent assessment must include the following evaluations:

(a) Each youth must be observed by an appropriate program professional staff member trained to identify noticeable evidence of any illness, communicable disease or signs of abuse.

(b) Youths that have special medications or treatment procedures, dietetic restrictions, known allergic reactions or any known physical limitation must meet with senior field staff and an appropriate program professional staff member to define special needs and services required while on expedition. On the basis of this evaluation, the program professional staff member shall decide whether the youth will be allowed to enter the expedition portion of the program. A written summary of this evaluation, including special needs of the youth and services required of the expedition staff, must be placed in the youth's file before the youth enters the field.

(c) For a youth with a history of mental illness, a psychological evaluation must be prepared by an appropriate program professional staff member prior to the youth's entrance into the expedition portion of the program. On the basis of this psychological evaluation, the program professional staff member shall decide whether the youth will be allowed to enter

the expedition portion of the program. A written summary of this evaluation, including special needs of the youth and services required of the expedition staff, must be placed in the youth's file before the youth enters the field.

(d) The senior field staff member assigned to the outdoor experience shall interview the youth prior to entrance into outdoor activities to determine the youth's suitability for planned outdoor activities. On the basis of this evaluation, the senior field staff member shall decide whether the youth will be allowed to enter the expedition portion of the program. A written summary of this evaluation must be placed in the youth's file before the youth enters the field.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXIV DEVELOPMENT AND CONTENT OF THE CASE PLAN

(1) A case plan for each youth must be developed within 14 days of admission and prior to entering into the expedition portion of the program. The case plan team must include at minimum the appropriate members of the program professional staff and the field director. Members of the case plan team shall develop and sign the case plan.

(2) The case plan must address, at a minimum, the following:

(a) the youth's physical and medical needs;

(b) behavior management issues;

(c) mental health treatment methods;

(d) addictive disorder treatment methods;

(e) education plans;

(f) measurable goals and objectives;

(g) the responsibilities of the youth and staff for meeting the goals and objectives;

(h) the minimum number of hours per week the youth will receive individual and/or group counseling;

(i) discharge and aftercare planning, to include referrals to other agencies;

(j) type and frequency of therapeutic intervention activities;

(k) interventions to be used should the youth refuse to participate in any prescribed activity; and

(l) interventions to be used should the youth become a danger to self or others.

(3) The case plan must be reviewed and updated by the case plan team every 90 days or whenever there is a significant change in the youth's condition.

(4) Copies of the case plan must be provided to the senior field staff and placed in the youth's file immediately upon completion or update.

(5) Copies of the case plan must be sent to the placing agency, and to the parents or legal guardians within 10 days of completion or update.

AUTH: Sec. 50-5-220, MCA

IMP: Sec. 50-5-220, MCA

RULE XXXV DISCHARGE SUMMARY (1) Within one week of the discharge of a youth from the program, a discharge report must be completed, including:

(a) a written summary of services provided, the youth's participation and progress, results of evaluations, condition of the youth, briefings and debriefings, compliance with program policies, procedures and recommendations; and

(b) the signature of the staff member who prepared the report and the date of preparation.

(2) The original discharge report must be maintained by the program in the youth's file, and a copy shall be provided to the placing agency and to the parents or legal guardians within 10 days of completion.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXVI BEHAVIOR MANAGEMENT POLICIES (1) A program shall have and follow written behavior management policies and procedures including a description of the model, program or techniques to be used with youth. The program shall have policies addressing discipline, therapeutic de-escalation of crisis situations, passive physical restraint, nonviolent crisis intervention, and time out. Behavior management must be based on an individual assessment of each youth's needs, stage of development and behavior. It must be designed with the goal of teaching youth to manage their own behavior and be based on the concept of providing effective treatment by the least restrictive means.

(2) The program shall document that a copy of the written policies has been provided and explained to each youth. A copy of the policies must also be provided to parents, guardians and referral sources upon request.

(3) The behavior management policies must prohibit:

(a) the use of physical force, mechanical, chemical, or physical restraint as discipline;

(b) pain compliance, aversive conditioning, and use of pressure point techniques;

(c) the placing of anything in or on a youth's mouth;

(d) cruel or excessive physical exercise, prolonged positions or work assignments that produce unreasonable discomfort;

(e) verbal abuse, ridicule, humiliation, profanity and other forms of degradation directed at a youth or a youth's family;

(f) locked confinement or seclusion;

(g) withholding of necessary food, water, clothing, shelter, bedding, rest, medical care or toilet use;

(h) denial of visits or communication with the youth's family as punishment or discipline. Visits or communication with the youth's family may be limited as specified in the program's design and planned activities, in accordance with the

youth's service plan, or by court order;

(i) isolation as punishment, except as provided for in the time out provisions of [RULE XXXVIII]; and

(j) any other form of punishment or discipline which subjects a youth to pain, humiliation, or unnecessary isolation or restraint.

(4) If program policies allow for disciplining a group of youth for actions of one youth, the organization's policies and procedures for behavior management or discipline must clearly prescribe the circumstances and safeguards under which disciplining the group is allowed.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXVII USE OF NONVIOLENT CRISIS INTERVENTION STRATEGIES (1) The program shall have written policies and procedures governing the appropriate use of nonviolent crisis intervention strategies, including:

(a) the use of de-escalation techniques;

(b) physical assists; and

(c) physical restraints.

(2) The nonviolent crisis intervention strategies, policies and procedures must comply with the following:

(a) Crisis prevention and verbal and non-verbal de-escalation techniques are the preferred methods and must be used first to manage behavior. All staff working directly with youth must be trained in de-escalation techniques. This training must be documented in each staff member's personnel file.

(b) Appropriate use of physical assists occurs when staff members physically aid, support or redirect youth who are not physically resisting. Physical assists include staff leading youth along the trail or moving youth to his or her campsite by gently pulling on a backpack strap, guiding him or her by the hand or elbow, or placing a hand on the youth's back. If a youth resists reasonable staff direction, staff must assess whether the use of physical restraint is warranted based on the program's written nonviolent physical restraint policy.

(c) Physical restraint must be used to safely control a youth until he or she can regain control of his or her own behavior. Physical restraint must only be used in the following circumstances:

(i) when a youth's behavior is out of control;

(ii) when the youth has failed to respond to de-escalation techniques and/or physical assists;

(iii) when necessary to prevent harm to the youth or others, or to prevent the substantial destruction of property; or

(iv) when a youth's behavior puts himself/herself or others at substantial risk of harm and he/she must be forcibly moved.

(d) Physical restraint must be used only until the youth has regained control and must not exceed 15 consecutive minutes. If the youth remains a danger to self or others after 15

minutes, the record must include written documentation of attempts made to release the youth from the restraint and the reasons that continuation of restraint is necessary.

(e) Physical restraint may be used only by employees documented to have been specifically trained in nonviolent crisis intervention techniques.

(f) Program policies must prohibit the application of a nonviolent physical restraint if a youth has a documented physical condition that would contraindicate its use, unless a health care professional has previously and specifically authorized its use in writing. Documentation must be maintained in the youth's record.

(g) Program policies must require documentation of the behavior which required the physical restraint, the specific attempts to de-escalate the situation before using physical restraint, the length of time the physical restraint was applied including documentation of the time started and completed, and the debriefing completed with the staff and youth involved in the physical restraint.

(h) Program policies must require that whenever a physical restraint has been used on a youth more than two times in one week, there is a review by lead clinical staff members to determine the suitability of the youth remaining in the program, whether modification to the youth's plan are warranted, or whether staff need additional training in alternative therapeutic behavior management techniques. The program shall take appropriate action as a result of the review.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXVIII TIME OUT (1) Time out must only be used when a youth's behavior is disruptive to the youth's ability to learn, to participate appropriately, or to function appropriately with other youth or the activity and when other de-escalation techniques have failed. Restraint, seclusion, or confinement may not be used as part of time out procedures.

(2) A staff member must be designated to be responsible for visually observing the youth at random intervals at least every 15 minutes.

(3) If the duration of the time out exceeds one hour, or there is visual separation of the youth, a report must be written and placed in the client's file in sufficient detail to provide a clear understanding of the occurrence or behavior which resulted in the youth being placed in time out, and staff's attempts to help the youth avoid time out.

(4) Youth placed in time out must be re-introduced to the group in a sensitive and non-punitive manner as soon as control is regained.

(5) If there are more than 10 one hour time outs for a youth in a 24-hour period, or the separation lasts for 24 hours, appropriate lead clinical staff members must conduct a review to determine the suitability of the youth remaining in the program, whether modifications to the youth's plan are warranted, and

whether staff need additional training in alternative therapeutic behavior management techniques. The results of the review must be documented and placed in the youth's file. The program shall take appropriate action as a result of the review.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XXXIX ANIMALS AND PETS (1) A program may make use of domesticated animals or pets as part of a youth's treatment plan, provided that animals and pets are vaccinated, free from disease, not a danger to the youth, and cared for in a safe and clean manner. The program shall have documentation of current vaccinations, including rabies, as appropriate for all animals and pets.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XL POTENTIAL WEAPONS (1) A program shall have and follow written policy and procedures on management of weapons and potential weapons.

(2) Firearms must not be allowed in programs.

(3) Program staff shall inventory knives, hatchets, other edged tools or any item which might pose a danger to youth and complete a daily count of these items against the inventory. Program staff shall supervise youth possession and use of knives, hatchets, other edged tools or any item which might pose a danger to self or others.

(4) Large animal repellants must be stored under lock and key and safeguarded from youth. Youth shall only use large animal repellants under the supervision of staff.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XLI CONTRABAND (1) A program shall define prohibited contraband in a written policy.

(2) Law enforcement must be notified as appropriate when prohibited contraband is discovered.

(3) It is the responsibility of the program administrator or designee to dispose of all contraband not confiscated by law enforcement in accordance with the program's contraband policy. When contraband is disposed of, the disposal must be witnessed by at least two other staff members and must be documented in the youth's case record.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XLII PROGRAM REQUIREMENTS: SEARCHES (1) The provisions of this rule apply to all searches by program staff of youth and their personal property, including searches of personal correspondence.

(2) Youth may not be subjected to a search of the youth's person, personal property or correspondence unless there is reasonable cause to believe that the search will result in discovery of contraband, or unless there is reasonable cause to believe that the search is necessary to alleviate a threat of harm to the youth, other youths, or staff. The facts and circumstances supporting a determination of reasonable cause for the search must be documented in the youth's file.

(3) Any correspondence search must be conducted in the presence of the youth.

(4) The program shall adopt policies relating to searches, including pat down searches, personal property searches and correspondence searches. The policies must include the following:

(a) a protocol for conducting personal property searches when the youth is not available to be present for the search; and

(b) a procedure for documenting all searches, reasons for the search, who conducted the search and the results of the search.

(5) Youth may not be subjected to any of the following intrusive acts:

(a) strip searches;

(b) body cavity searches; or

(c) video surveillance.

(6) Youth may be not subjected to urinalysis testing unless the testing has been ordered by a court, is required pursuant to a case plan for monitoring drug or alcohol use or requested by the youth's parent or legal guardian. The following requirements must be met by the program utilizing urinalysis testing:

(a) Prior to any testing, the program shall adopt policies which address, at a minimum, procedures for obtaining samples for urinalysis testing.

(b) Staff shall document compliance with program policies in connection with each testing.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XLIII EMERGENCY AND EVACUATION PLANS (1) A program shall have and follow a written emergency plan developed in conjunction with emergency services in the community which provides specific procedures for evacuations, disasters, medical emergencies, hostage situations, casualties, missing youth and other serious incidents identified by the program.

(2) The emergency plan must, at a minimum, include:

(a) designation of authority and staff assignment;

(b) a specific evacuation plan;

(c) provisions for transportation and relocation of program participants when necessary;

(d) provisions for supervision of youth after an evacuation or a relocation;

(e) provisions for the instruction of all participants on

how to respond in the case of an emergency; and

(f) provisions for arranging medical care and notifying a youth's physician and parent or guardian.

(3) When youth are on an expedition:

(a) Emergency plan drills must be practiced with youth and staff immediately upon entering the outdoor location and monthly thereafter. Results of the drill must be recorded, showing date, time, staff and youth present with problem areas noted in the log.

(b) A program shall have support vehicles for transport of youth from expedition sites during emergencies. The support vehicles and field office must be equipped with first aid equipment.

(c) A program shall have provisions for notifying the field office about the nature of the emergency and an accounting of each participant's location and status.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XLIV HEALTH CARE (1) Medical, dental, psychiatric, psychological, chemical dependency care and counseling must be obtained for the youth as needed.

(2) Each youth in care must receive an annual physical examination.

(3) Each youth in care must receive an annual dental examination.

(4) Provisions for treatment of diseases, remedial defects or deformities, and malnutrition must be made by the program immediately upon the physician's recommendation with notification of the placing agency and parent or legal guardian.

(5) The program shall develop and follow written policies and procedures to keep youth healthy while in the program. Medical care must be provided to all youth as needed and must be documented in the youth's case records. A signed release for emergency medical treatment from the parent or guardian must be documented in the youth's file.

(6) First aid treatment must be provided in as prompt a manner as the location and circumstances allow.

(7) The program shall immediately transport any youth with an illness or physical complaint that needs immediate care or treatment to appropriate medical care.

(8) Complaints or reports by a youth of illness and injuries must be documented in a daily log along with any treatment provided.

(9) There may not be any negative consequence imposed on a youth for reporting an injury or illness or for requesting to see a health care professional.

(10) Youth must be instructed and monitored regularly by staff in matters of personal hygiene.

(11) The program shall develop and follow written policies and procedures governing emergency medical and dental care.

(12) The program shall develop a written plan to prohibit:

(a) the use of tobacco, alcohol or illegal drugs by youth;

and

(b) all use of tobacco, alcohol or illegal drugs by employees, volunteers and visitors in any program building or vehicle used by youth and in the presence of youth.

(13) A program shall develop and follow written policies and procedures governing all aspects of suicide prevention and intervention, which must meet the following criteria:

(a) The suicide prevention and intervention policies must be reviewed and approved by professional staff members.

(b) All staff with responsibility for the supervision of youth must be trained in the implementation of the policies. Documentation of training must be in the staff personnel file.

(14) Depending on the length of the program and/or whether these needs have been documented to have been met elsewhere, youth must receive age-appropriate health education and instruction regarding teen pregnancy prevention, HIV education and prevention and general information about the prevention and treatment of sexually transmitted diseases. The program shall be in compliance with federal and state guidelines governing sexually transmitted diseases.

(15) Staff must be trained to recognize eating disorders. This training must be documented in staff records. If the staff suspects the youth has an eating disorder, staff shall report the suspicions immediately to the youth's legal guardian and to the appropriate program professional staff members.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XLV INFECTION CONTROL (1) Each program shall provide, develop and implement an effective infection prevention and control program. The program must develop policies and procedures to evaluate all factors, including, although not limited to, risk evaluations, education and TB screening of employees and residents. The decision to perform regular repeat testing of some employees or residents must be based on data from within the facility, the risk associated with certain procedures performed and the number of infectious cases reported within the county and state.

(2) A program shall provide a sanitary environment to avoid sources and transmission of infections which must include:

(a) separation of infected individuals from other group members;

(b) notification of a parent or legal guardian;

(c) consultation with a doctor or medical facility, if appropriate for the youth's treatment;

(d) notification or consultation with the program's medical director; and

(e) proper disinfection of all items used by the infected individual before use by any other person.

(3) A program shall maintain a record of incidents and corrective actions related to infections.

(4) A program shall prohibit staff with symptoms or signs of a communicable disease from direct contact with the youth and

their food.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XLVI MEDICATION STORAGE AND ADMINISTRATION (1) A program shall have and follow policies and procedures regarding the storage, administration and disposal of prescription and nonprescription medication.

(2) Prescription and nonprescription medication must be stored under lock and key and safeguarded from youth in their original containers, labeled with the original prescription label. For medications taken on field outings, all medication must be in the possession of a staff member qualified to assist with the self administration of medications.

(3) Staff who assist with self administration must be trained in proper medication procedures. Training must be documented in each staff member's personnel file.

(4) All prescription medications must be ordered by licensed health care professionals working within the scope of their practice. All prescription orders must contain the dosage to be given.

(5) Psychotropic medication is prohibited unless a licensed health care professional working within the scope of his or her practice determines that the medications are clinically indicated. Under no circumstances may psychotropic medication be given for disciplinary purposes, for the convenience of the staff, or as a substitute for appropriate treatment services.

(6) There must be a written record of all medications self administered by a youth. The record must include:

(a) youth's name;

(b) name and dosage of the medication;

(c) the date and time the medication was taken or was refused by youth;

(d) name of the staff member who assisted in self administration of the medication; and

(e) documentation of any medication errors, results of errors and any effects observed.

(7) Prescribed medication may not be stopped or changed in dosage or administration without first consulting with the prescribing licensed health care professional. Results of the consultation must be recorded in the youth's record. The licensed health care professional shall document in writing any changes to medication. This documentation must be kept as part of the youth's case record.

(8) All unused and expired medication must be disposed of. Disposal of unused medication must be witnessed by at least two other staff members, and the disposal method must be documented in the youth's record.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XLVII SAFETY POLICY (1) A program shall have appropriate written safety procedures and equipment.

(2) Each youth must have instruction on environmental hazards and precautions.

(3) There must be a first aid kit with sufficient supplies available at all times. A kit must:

(a) be readily available on site as well as in all vehicles;

(b) meet the standards of an appropriate national organization for the activity being conducted and the location and environment being used;

(c) be reviewed by the field director with new staff for contents and use;

(d) be reviewed at least annually by the field director with all staff for contents and use; and

(e) be inventoried by the field director after each expedition and restocked as needed.

(4) Policies and procedures must be in place for the safe use and storage of fuels and all heat sources, including inaccessibility to youth when not being used under the direct supervision of staff.

(5) Policies and procedures must be in place for the safe use and storage of poisons and toxins as follows:

(a) All medicines, alcohol, detergents, chemical sanitizers and related cleaning compounds and other chemicals must be stored in a safe location that is inaccessible to youth.

(b) Combustible and flammable materials and liquids must be properly stored so as not to create a fire hazard.

(c) Poisonous compounds such as insecticide, rodenticide, and other chemicals bearing the EPA toxicity labels "warning" or "danger" must be kept under lock and key.

(d) Poisonous or toxic chemicals may not be stored above or adjacent to food, dishes or utensils or food contact surfaces. They may not be used in such a manner that they could contaminate these articles.

(6) Emergency information for youth must be easily accessible at the field office and on an expedition. Emergency information for each youth must include:

(a) the name, address, telephone number and relationship of a designated person to be contacted in case of an emergency;

(b) the name, address, telephone number of the youth's licensed health care professional or source of health care;

(c) the name, address, telephone number and relationship of the person able to give consent for emergency medical treatment;

(d) a copy of the youth's most recent health examination; and

(e) a signed release for emergency medical treatment from the parent or legal guardian.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XLVIII RESIDENTIAL OUTDOOR SERVICES: FIRE SAFETY

REQUIREMENTS (1) Residential outdoor services programs shall comply with all fire, life safety, and building regulations as determined by the local building official and fire authority for all buildings serving youth.

(2) Residential outdoor services programs shall have an annual fire inspection conducted by the appropriate local fire authority or the state fire marshal's office for all buildings serving youth. The program shall maintain a record of such inspection for at least three years following the date of the inspection.

(3) All exits must be marked and be clear and unobstructed at all times.

(4) Paint, flammable liquids and other combustible material must be kept in locked storage away from heat sources or in outbuildings not used by the youth.

(5) Residential outdoor services staff and residents must be instructed during orientation in the procedure for evacuation in case of fire. The procedure and evacuation maps must be posted in conspicuous places.

(6) Residential outdoor services programs shall conduct evacuation and disaster drills and document results in a program file. The documented results must include but are not limited to the following:

(a) date and time of the drill;

(b) the names of staff involved in the drill;

(c) the names of other facilities, if any, which were involved in the drill;

(d) the names of other persons involved in the drill;

(e) a description of all phases of the drill procedure and suggestions for improvement; and

(f) the signature of the person conducting the drill.

(7) Fire drills for residential outdoor services in all buildings serving youth must include the transmission of fire alarm and simulation of emergency fire conditions. Drills must be conducted quarterly on each shift to familiarize staff with the signals and emergency action required under varied conditions. When drills are conducted between 9:00 p.m. and 6:00 a.m., a coded announcement may be used instead of an audible alarm.

(8) Smoke detectors approved by a recognized testing laboratory must be located at stairways and in any areas requiring separation as set forth in the uniform building codes.

(9) Smoke detector batteries must be checked by the residential outdoor services staff at least once each month and the batteries replaced at least once each year. The date and signature of the person checking the batteries in the smoke detector must be recorded and filed at the program office.

(10) A fire extinguisher approved by a recognized testing laboratory with a minimum rating of 2A10BC must be located on each floor of any residential outdoor services building.

(11) A fire extinguisher approved by a recognized testing laboratory with a minimum rating of 2A10BC must be readily accessible to the kitchen area.

(12) Fire extinguishers must be checked by the residential

outdoor services staff at least quarterly. The date and signature of the person checking the fire extinguisher shall be recorded on the attached tag. Portable fire extinguishers must be inspected, recharged and tagged at least once a year by a person certified by the state to perform such services.

(13) Residential outdoor services staff must be trained in the proper use of the fire extinguisher and the training recorded in the files.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE XLIX RESIDENTIAL OUTDOOR SERVICES: WATER (1) A residential outdoor services program shall provide an adequate and potable supply of water. The residential outdoor services program shall:

(a) connect to a public water supply system approved by the Montana department of environmental quality; or

(b) if a nonpublic water system is used by a residential outdoor services program, the water system must comply with the standards outlined in department of environmental quality circular 3 (DEQ-3) and department of environmental quality circular 4 (DEQ-4). The department adopts and incorporates by reference department of environmental quality circular 3 (DEQ-3) (2002) and department of environmental quality circular 4 (DEQ-4) (2002). Copies may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(2) When a nonpublic water supply is used, the residential outdoor services program shall submit a water sample at least quarterly to a laboratory licensed by the department of environmental quality in order to determine that the supply does not contain microbiological contaminants.

(3) The water system must be repaired or replaced if the supply:

(a) contains unacceptable levels of microbiological contaminants; or

(b) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water-carried waste disposal.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE L RESIDENTIAL OUTDOOR SERVICES: SEWAGE AND WASTE DISPOSAL (1) To ensure sewage is safely disposed of, the residential outdoor services program shall either:

(a) connect to a public sewer approved by the Montana department of environmental quality; or

(b) connect to a private septic system that is approved by the local sanitarian.

(2) The sewage system must be repaired or replaced whenever:

(a) it fails to accept sewage at the rate of application;
(b) seepage of effluent from or ponding of effluent on or around the system occurs;
(c) contamination of a potable water supply or state waters is traced to the system; or
(d) a mechanical failure occurs.
(3) Residential outdoor services programs shall:
(a) store all solid waste in containers which have lids and are corrosion-resistant, fly tight, watertight, and rodent-proof;
(b) clean all solid waste containers frequently; and
(c) transport or utilize a private or municipal hauler to transport the solid waste at least weekly to a landfill site approved by the department of environmental quality in a covered vehicle or covered containers.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LI RESIDENTIAL OUTDOOR SERVICES: PHYSICAL ENVIRONMENT (1) A residential outdoor services program shall provide a minimum of 10 foot-candles of light in all rooms and hallways, with the following exceptions:
(a) all reading lamps must have a capacity to provide a minimum of 30 foot-candles of light;
(b) all toilet and bathing areas must be provided with a minimum of 30 foot-candles of light;
(c) general lighting in food preparation areas must be a minimum of 30 foot-candles of light; and
(d) hallways must be illuminated at all times by at least a minimum of five foot-candles of light at the floor.
(2) Adequate space must be provided for all phases of daily living, including recreation, privacy, group activities and visits from family, friends and community acquaintances.
(3) Youth must have indoor areas of at least 40 square feet of floor space per youth for quiet, reading, study, relaxing and recreation. The minimum space requirement may not include halls, kitchens and any rooms not used by youth must not be included in the minimum space requirement.
(4) A sleeping room must contain at least 50 square feet of floor space per person. Bedrooms for single occupancy must have at least 80 square feet.
(5) Maximum number of youth per bedroom must not exceed four. The bedrooms must have floor to ceiling walls.
(6) The program shall provide:
(a) at least one toilet for every four residents; and
(b) one bathing facility for every six residents.
(7) All resident rooms with toilets or shower/bathing facilities must have an operable window to the outside or must be exhausted to the outside by a mechanical ventilation system.
(8) Each resident must have access to a toilet room without entering another resident's room, the kitchen or dining areas.
(9) Bathrooms must have a toilet with a sink in each

toilet area. The toilet and sink must be cleaned thoroughly with a germicidal cleaner at least weekly and more often if needed.

(10) Hot and cold water must be available. Water temperature for hot water must be limited to 120°F or below.

(11) A washing machine and dryer must be available.

(12) The program shall have a telephone. Telephone numbers of the hospital, police department, fire department, ambulance, and poison control center must be posted by each telephone. Telephone numbers of the parent(s) and placing agency must be readily available.

(13) A program shall provide ongoing appropriate maintenance of program buildings.

(14) A program shall ensure its facilities, buildings, homes, equipment, and grounds are clean and maintained in good repair at all times for the safety and well being of youth, staff and visitors. Program buildings may not have any peeling paint, cracked mirrors, broken furniture or damaged floor covering.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LII TRANSPORTATION (1) Any person transporting youth must possess a valid Montana driver's license for the type of vehicle used in transporting the youth.

(2) Any person transporting youth must comply with applicable traffic laws while transporting youth.

(3) The vehicle used in transporting youth must at a minimum:

(a) have proper Montana registration;

(b) have insurance coverage;

(c) be maintained in a safe condition;

(d) be equipped with a red triangle reflector device for use in a emergency; and

(e) be equipped with a first aid kit.

(4) The driver and all of the passengers must ride in a vehicle manufactured seat. Each person shall use a seat belt.

(5) No person can ride in the bed of or on the back of a truck.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LIII OUTDOOR BEHAVIORAL PROGRAM: HIGH ADVENTURE GENERAL REQUIREMENTS (1) High adventure activities may include the following:

(a) target sports;

(b) aquatics;

(c) hiking;

(d) adventure challenge courses;

(e) climbing and rappelling;

(f) all season camping;

(g) soloing;

(h) spelunking;
(i) expeditioning;
(j) swimming in a river, stream, lake or pond;
(k) white water activities;
(l) animal related activities;
(m) skiing;
(n) orienteering;
(o) trampoline; or
(p) other activities approved by the department.

(2) For the high adventure activities identified in (1) and for any activity identified by the program or the department as a high adventure activity, the program shall adopt and follow written policies and procedures that address:

(a) minimum training, experience and qualifications for leaders and staff which must be documented in personnel records;

(b) specific staff-to-participant ratios appropriate to the activity;

(c) classification and limitations for each youth's participation;

(d) arrangement, maintenance and inspection of the activity area;

(e) appropriate equipment and the inspection and maintenance of the equipment;

(f) safety precautions to reduce the possibility of an accident or injury; and

(g) an explanation of the purpose of each high adventure activity.

(3) A program shall designate a high adventure activity leader for each expedition or high adventure outing or activity. The high adventure leader must be at least 21 years of age and have documented training and experience for conducting the specific activity. Training and experience must be documented and kept on file for each high adventure leader.

(4) High adventure activity policies and procedures must comply with the minimum standards required by other rules in this subchapter pertaining to the specific high adventure activities.

(5) No youth must be forced to participate in any high adventure activity.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LIV HIGH ADVENTURE REQUIREMENTS: SWIMMING (1) All swimming activities must be supervised by a swimming supervisor who, at a minimum, holds a current American red cross life guard training certificate or equivalent, such as a YMCA or boy scout aquatics instructor's certificate. If the program is offering swimming instruction, the swimming supervisor must also hold an American red cross water safety instructor certificate or equivalent.

(2) At any time the swimming area is open, there must be at least one staff member for each 10 youths in the water present at the swimming area. At all times, at least one staff

member who holds a current American red cross life guard training certificate or equivalent, such as a YMCA or boy scout aquatics instructor's certificate, must be present for each 30 youths in the water.

(3) The swimming area must be off limits when the required numbers of qualified staff members are not present.

(4) If the program uses a pool for which the program is not responsible, the program need not provide a lifeguard if there is a qualified lifeguard provided by the pool. There must be at least one program staff member at the pool for each 10 youths in the water.

(5) Swimming area rules and emergency procedures must be posted in a visible location at the swimming area.

(6) The swimming pool or swimming area must be in compliance with all applicable provisions of Montana law.

(7) If youths are permitted to swim in a lake or pond, the swimming areas must be clearly designated.

(8) Before youths are permitted to swim in deep water, swimming skills must be tested by properly trained staff members.

(9) There must be a system known to youth and lookout staff for checking the youth when youths are in the water.

(10) The following equipment must be available for use at the pool side or the lake shore in which swimming is permitted:

(a) a rescue tube;

(b) a reach pole; and

(c) a backboard.

(11) Where the size of the body of water makes it impossible to reach victims by a reach pole, rescue tube or other rescue device, a rescue boat shall be available at all times.

(12) If a program has shoreline activities such as wading, fishing, ecology or nature studies, the program must have a written policy which defines qualifications of persons accompanying the group and safety factors to be followed. Staff members must be acquainted with the policy.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LV HIGH ADVENTURE REQUIREMENTS: BOATING, CANOEING, SAILING, TUBING, KAYAKING AND WHITE WATER RAFTING (1) All boating, canoeing, sailing, tubing, kayaking and white water rafting activities must be supervised by a boating supervisor meeting the following qualifications:

(a) a current American red cross life guard training certificate or equivalent, such as a YMCA or boy scout aquatics instructor's certificate; and

(b) a basic small craft certificate for the type of craft which is to be supervised.

(2) Other staff members present during boating, canoeing, sailing, tubing, kayaking and white water rafting activities must have appropriate experience and training for the type of craft to be utilized.

(3) Whenever youths are on the water they must be wearing a United States coast guard approved personal flotation device appropriate to the weight of the youth.

(4) The boating supervisor shall determine the number and location of lookout staff necessary to protect the safety of the youths, taking into consideration such factors as the type of activity and water craft, the size and condition of the body of water, water temperature, and the skill of the youths involved, provided that, at a minimum, two lookout staff members shall always be present on the shoreline or in the water.

(5) At no time may the occupancy of any craft exceed the capacity established for the craft by the United States coast guard standards.

(6) There must be a warning device, such as a loud whistle, air horn, or other audible signal device, which can readily be heard or seen by persons on the water that indicates the need for youths and staff to return to the shore.

(7) As determined by the boating supervisor, there must be a rescue boat in close proximity to where the activity takes place in accordance with the size and depth of the body of water. This rescue boat shall be in good repair and shall contain a rescue tube, reach pole and an extra oar or paddle.

(8) Water craft may not enter a swimming area when swimmers are in the water unless the craft is utilized in rescue operations.

(9) The following requirements are specific to canoeing, tubing or kayaking on moving water:

(a) Canoeing, tubing or kayaking must be limited to class II or less water (as defined by the international scale of river difficulty).

(b) Supervising staff must be experienced and knowledgeable about the river being used, including the height and speed of the river.

(c) The program shall develop and follow a written policy on evaluating the safety of the river. Supervising staff must be trained on the policy.

(d) The supervisor must be familiar with rescue techniques with canoes, kayaks and tubes on moving water and shall train youths in these techniques.

(e) Rescue equipment appropriate to the activity must be available, such as rope throw bag and rescue tubes.

(10) The following rules are specific to white water rafting:

(a) White water rafting must be limited to class III or less water. Rafting on class IV water is prohibited.

(b) Supervising staff must be experienced and knowledgeable regarding white water rafting and about the river being used, including the height and speed of the river.

(c) The supervisor must be familiar with applicable rescue techniques and shall train youths in these techniques.

(d) Rescue equipment appropriate to the activity must be available, such as rope throw bag and rescue tubes.

(e) There must be sufficient food storage, adequate to keep food dry and large enough to store food for the size of the

raft and the length of the trip.

(f) Waterproof dunnage bags must be provided for passengers and be secured to the raft.

(g) A youth must be at least 50 pounds to ride a paddle raft or an oar raft in a class III river.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LVI HIGH ADVENTURE REQUIREMENTS: ARCHERY (1) All archery activities must be supervised by an experienced archery supervisor.

(2) The archery range must be free from hazards and well marked. There must be a clear path to the target which is not obstructed by such things as rocks, trees or branches. Traffic, trail or other program activities may not be placed in the direction of the flight of the arrows.

(3) Equipment must be maintained in safe condition. Bows and arrows must be inspected for fractures, splinters or cracks before each use. Damaged bows and arrows may not be utilized.

(4) Equipment must be stored under lock and key when not in use. Bows and arrows must be used only in the specified archery area.

(5) All archers shall use the same firing line. Arrows must be issued only at the firing line.

(6) Arrows must be nocked to bow string after shooters are on the firing line and after the signal to shoot has been given.

(7) Before arrows are released, shooters must have a definite target.

(8) Movement must be controlled by a supervising staff member. All persons shall stay behind the firing line until the signal to retrieve arrows is given. All arrows must be retrieved at the same time.

(9) If the program has field archery, a procedure must be established and posted to provide for the safety of the archers, including issuance of arrows at the check-in point of the archery trail, the check in of an archer at the beginning of the archery trail and the check out when archer has completed the trail.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LVII HIGH ADVENTURE REQUIREMENTS: HORSEBACK RIDING

(1) All horseback riding activities must be supervised by a horseback riding supervisor who must have at least one of the following:

(a) a certificate from a nationally recognized horseback riding organization or riding school; or

(b) written verification of successful experience in formal horseback riding instruction or equivalent horseback riding experience.

(2) The horseback riding supervisor shall train a sufficient number of riding staff members in the supervision of

youth in the horseback riding program for the anticipated size of the riding program.

(3) Riding staff must be trained by the horseback riding supervisor in emergency procedures appropriate to the horseback riding activity.

(4) Any trail excursion must comply with the following:

(a) At least two trained riding staff members, one of whom holds a current American red cross community first aid and safety certificate or equivalent, shall accompany each trail excursion.

(b) If the horseback ride is for seven or more nights or is more than one hour away from emergency medical services, there must be at least one staff member with each group of youth with wilderness first responder training, CPR and medication administration training.

(c) If more than 20 youth participate in the trail excursion, in addition to the two trained riding staff members required by (4)(a), there must be an additional trained riding staff member assigned for each additional 10 or fewer riders.

(5) First aid supplies must be carried on each trail excursion and available at each horseback riding ring/arena.

(6) No person is allowed in the riding area unless the horseback riding supervisor or a trained riding staff member is present.

(7) The riding supervisor shall determine each youth's riding experience and level of skills and shall take these into account in assigning which horse each youth should ride and determining the type of riding activity in which each youth should engage.

(8) Youth must be given instruction in basic safety, which must include at least the following:

(a) riding rules in the ring and on the trail; and

(b) how to approach, mount and dismount.

(9) Youth must be appropriately dressed for riding, including wearing appropriate shoes or boots. The riding supervisor shall evaluate the footgear of each youth and make the stirrups safe for each youth's shoe or boot.

(10) Helmets are mandatory for youths engaged in ring riding and trail rides.

(11) The horseback riding equipment must be in good condition, properly sized and adjusted for each rider.

(12) The horse barn or stable, ring and commonly used trails must be in good repair and free of dangerous obstructions.

(13) Horses must be cared for with evidence of an adequate feeding schedule and a means to care for sick horses.

(14) Horses may not be permitted in the other designated activity areas.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LVIII HIGH ADVENTURE REQUIREMENTS: TRAMPOLINE

(1) All trampoline activities must be supervised by a

trampoline supervisor who shall have documented formal training and experience in the use of trampoline and be knowledgeable about safety and spotting techniques.

(2) Trampolines must be equipped with pads along the sides, which must be kept in good repair.

(3) No person may be on the trampoline unless a trampoline supervisor is present and spotters are present on all four sides of the trampoline. If youth are utilized as spotters, the youth must be of sufficient age and physical size to be effective as spotters, and they must be instructed by the trampoline supervisor regarding what is expected. Spotters may not stand, sit or lie on the trampoline, but they must stand in a position of readiness, watching the jumper at all times.

(4) Trampolines must be secured from unauthorized use by any person.

(5) The youth may dismount the trampoline by sitting on the edge and sliding off. No youth shall jump off the trampoline.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LIX HIGH ADVENTURE REQUIREMENTS: REQUIREMENTS FOR ALL ROCK CLIMBING (1) All rock climbing activities must be supervised by a climbing supervisor meeting the requirements of this rule and [RULES LX and LXI]. The climbing supervisor must be assisted by climbing instructors meeting the requirements of this rule and [RULES LX and LXI].

(2) The following requirements apply to all rock climbing activities:

(a) Prior to participating in rock climbing, all youth must be instructed in the care and use of basic equipment, knots, anchors and belays, verbal signals, safety measures, basic climbing holds and moves, and techniques of rappelling.

(b) The climbing supervisor and at least one climbing instructor must be present at the climbing site during all climbing activities.

(c) A climbing instructor shall be present at the climbing site for each five climbers.

(d) A staff member who holds at least a current American red cross community first aid and safety certificate or equivalent shall be present at the climbing site.

(e) First aid supplies, put together by a person knowledgeable in first aid supplies needed for climbing activities and possible injuries, must be present at the climbing site.

(f) No youth may be forced to participate in climbing activities.

(g) The climbing supervisor shall be responsible for the proper maintenance of all equipment used. Equipment must be checked by the supervisor immediately prior to use.

(h) All rock climbing equipment must meet industry standards and must be maintained, visually and physically inspected and replaced on a timely basis.

(i) Climbers shall wear helmets at all times.
(j) The program may not permit an unsupervised climb.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LX HIGH ADVENTURE REQUIREMENTS: BASIC/SINGLE-PITCHED ROCK CLIMBING AND RAPPELLING (1) The following requirements apply to basic/single-pitched rock climbing and rappelling:

(a) The climbing supervisor and the climbing instructors must have verified knowledge of technical climbing by completion of a course, a climbing school or a minimum of 10 hours of instruction.

(b) Each rock climber must be visually supervised by the climbing supervisor or a climbing instructor.

(c) Youth waiting to climb must be supervised by a staff member.

(d) A belay must be used during rappelling, and all climbers must be belayed in a top rope manner by a climbing supervisor, climbing instructor or by another staff member trained by the climbing supervisor or a climbing instructor as a belayer.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXI HIGH ADVENTURE REQUIREMENTS: ADVANCED/MULTI-PITCHED ROCK CLIMBING (1) The following requirements apply to advanced/multi-pitched climbing:

(a) The climbing supervisor must:

(i) hold a current American red cross community first aid and safety certificate or equivalent and a current certificate for CPR;

(ii) have been an instructor, under supervision, for two seasons with verifiable experience and a review of any serious accidents;

(iii) have completed a technical climbing school or training in technical climbing with written evidence of such completion;

(iv) have led 10 additional multi-pitched class V climbs (as defined by the American alpine club) within the last two years; and

(v) have knowledge of mountain rescue techniques. If the climb is more than 60 minutes from emergency medical services, the climbing supervisor shall also hold a current wilderness first responder training certificate or equivalent.

(b) The climbing instructors shall:

(i) have the same training as the climbing supervisor;

(ii) have been an instructor, under supervision, for one season with verifiable experience and a review of any serious accidents;

(iii) have completed a technical climbing school or training in technical climbing;

(iv) have led five additional multi-pitched climbs; and

(v) have knowledge of mountain rescue techniques. No instructor may take youths on a climb the instructor has not previously completed.

(c) The rope leader shall be either the climbing supervisor or a climbing instructor. No youth may be the rope leader.

(d) The climbing supervisor shall assess the ability of the youth as to the difficulty of the climb.

(e) There must be one rope leader to each three climbers in an extended climb.

(f) First aid equipment must be carried with the staff on each climb.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXII HIGH ADVENTURE REQUIREMENTS: ROPE COURSES

(1) All rope course activities must be supervised by a rope course supervisor with training and experience on the type of rope course being used. The rope course supervisor must hold a current American red cross community first aid safety certificate or equivalent. The rope course supervisor shall be present during all rope course activities.

(2) The program shall have written safety procedures for use of the rope courses. Staff must be trained on the safety procedures.

(3) Rope courses must be inspected annually by knowledgeable personnel.

(4) Bolts must be tight and cables must be in good condition at all times.

(5) Rope courses must be inspected before use by the rope course supervisor.

(6) The integrity of all the trees in the rope course must be inspected regularly.

(7) Ropes, cables and bolts must be maintained, visually and physically inspected and replaced on a timely basis.

(8) Youth shall wear helmets when using the rope course.

(9) Rope courses must be off limits to youth when a rope supervisor or rope instructor is not present.

(10) Access to rope courses must be controlled by education, signs and whatever other means are necessary to control unsupervised access.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXIII HIGH ADVENTURE REQUIREMENTS: HIKING AND BACKPACKING (1) All hiking or backpacking trips and activities shall be supervised by a hiking or backpacking supervisor meeting the requirements of this rule.

(2) The hiking or backpacking supervisor shall:

(a) hold a current American red cross community first aid and safety certificate or equivalent;

(b) have knowledge of outdoor experience and the symptoms

and correct treatment procedures for hypothermia and dehydration; and

(c) have verifiable experience in hiking and backpacking at the elevation where the hike is to take place.

(3) All staff members involved in hiking or backpacking trips or activities shall:

(a) be trained by the supervisor concerning hypothermia and dehydration;

(b) have knowledge of the symptoms of hypothermia and dehydration and correct treatment procedures; and

(c) continually observe and monitor youths on the trail for early diagnosis and treatment of hypothermia and dehydration.

(4) When a group takes a hiking or backpacking trip where youth are away from the field office, there must be at least one staff member with each group of youth with:

(a) wilderness first responder training;

(b) CPR; and

(c) medication administration training.

(5) The hiking or backpacking supervisor shall consider the hiker's age, physical condition and experience, as well as the season, weather trends, evacuation and communication, and water quality and quantity when selecting the area for hiking or backpacking.

(6) Before participation in a hiking or backpacking activity, the youths must have a safety orientation and be instructed at a minimum on:

(a) the fundamental safety procedures on the trail;

(b) procedures for a hiker if they become lost;

(c) proper health procedures, including the need for drinking fluids and eating appropriate foods while on the trail;

(d) sanitation procedures on the trail;

(e) rules governing land to be hiked over;

(f) potential high-risk areas which may be found on the trail;

(g) fire danger precautions;

(h) flash floods;

(i) lightening dangers; and

(j) procedures when encountering wild animals.

(7) Each hiker or backpacker must be equipped with protective clothing and equipment against natural elements such as rain, snow, wind, cold, sun and insects.

(8) The hiking activity may not exceed the physical capability of the weakest member of the group.

(9) When a youth cannot hike, the group may not continue hiking unless it is necessary for compelling safety reasons.

(10) When a youth refuses to hike, a contingency plan, based on pre-approved polices and procedures, must be used. The plan must ensure that if the group is split, there is proper staff coverage for each group and communication between the groups is maintained.

(11) First aid supplies, assembled by a person knowledgeable in first aid supplies needed for hiking and backpacking activities and possible accidents or injuries, must

be present on each hike or backpacking trip. The contents of each kit must be adequate for the number of youths, the terrain and the length of the hike or backpacking trip.

(12) An itinerary of the hiking or backpacking trip and a list of all people on the hike or backpacking trip must be kept at the field office.

(13) The program shall have written safety procedures for hiking and backpacking, including a written protocol for evacuating a youth that becomes sick or injured on a hike or backpacking trip. Staff and youths must be trained on the safety procedures and protocol.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXIV HIGH ADVENTURE REQUIREMENTS: BICYCLING

(1) All bicycling trips and activities must be supervised by a bicycling supervisor who meets the requirements and qualifications set forth in this rule.

(2) The bicycling supervisor must:

(a) be familiar with state laws about bicycling;

(b) be knowledgeable about the type of bicycling terrain where the bicycle trips will occur;

(c) be knowledgeable about bicycling in the mountains, if applicable;

(d) be knowledgeable on making simple bicycle repairs; and

(e) hold at least a current American red cross community first aid and safety certificate or equivalent.

(3) A bicycling supervisor and at least one other staff member must accompany each bicycle trip. There must be one staff member at the beginning and end of each bicycle group.

(4) Each bicycler shall wear a helmet.

(5) Bicycles must be in good condition, properly maintained, inspected prior to each bicycling trip and adjusted to the size of the youth riding the bicycle.

(6) A bicycle repair kit and first aid equipment must be taken on each trip. The first aid supplies must be assembled by a person knowledgeable in first aid supplies needed for bike trips and possible accidents or injuries.

(7) The bicycling supervisor must instruct youths as to emergency procedures, safe riding practices and road and trail etiquette.

(8) The bicycling supervisor shall evaluate each youth as to his or her physical capabilities to participate in the planned bicycling trip, keeping in mind the trip length, terrain, altitude of the trip and weather conditions.

(9) Water/fluids must be taken on each bicycle trip.

(10) An itinerary of the biking trip and a list of all people on the biking trip must be kept at the field office.

(11) The program shall have written safety procedures of bike trips, including the written protocol for evacuating a youth that becomes sick or injured on a bike trip. Staff and youths must be trained on the safety procedures and protocol.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXV EXPEDITION: FIELD OFFICE REQUIREMENTS (1) A program shall have a field office in Montana. A field office may be a vehicle, a camp, a building, or the administrative office.

(2) The field office must be staffed and monitored 24 hours a day when there are youth in care in the field office or on expeditions. Field office staff shall respond immediately to any emergency situation.

(3) When field office staff are not present in the field office, a contact satellite phone number for the responsible on call staff must be posted on the field office door. The field director shall designate responsible on call staff who shall continually monitor communications and will always be on call with a satellite phone within 15 minutes travel time of the field office.

(4) Field office staff shall be responsible for:

(a) training and orientation, management of field personnel, related files and records; and

(b) maintaining communications, equipment inspection and overseeing medical incidents.

(5) The following items must be maintained at the field office:

(a) current staff personnel files;

(b) a current list of the names of staff and youth in each field group;

(c) a master map of all activity areas used by a program;

(d) each group's expeditionary route with its schedule and itinerary, copies of which must be sent to the department and local law enforcement when requested;

(e) current logs of all communications with each field group away from the field office;

(f) an emergency response plan that is reviewed annually;

(g) program participant files, which include:

(i) youth case record including case plan;

(ii) admission and subsequent assessments;

(iii) physical examination completed as part of program admission process and any subsequent physical exams; and

(iv) medical treatment authorization.

(6) A program shall comply with federal, state and local laws and regulations and shall maintain proof of compliance at the field office. An arrangement must be made with national or state forest service offices if such land is to be used by the field office. If the field office or the expedition camp is located on or uses national or state lands, the administrator shall familiarize the staff and youth with rules and ethics governing the use of such property and shall be responsible for compliance.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXVI EXPEDITION: STAFF TRAINING (1) All outdoor experience and expedition staff training must be documented and kept on file for each staff member, intern and volunteer.

(2) A program shall have written policies, procedures and training curriculum regarding minimum requirements for orientation, field training and ongoing training.

(3) A program shall provide a minimum of 40 hours initial staff training.

(4) Initial staff training may not be considered completed until the staff members have demonstrated to the field director proficiency in each of the following:

(a) supervision of program participants;

(b) procurement, preparation and conservation of water, food and shelter;

(c) low impact wilderness expedition and environmental conservation skills and procedures;

(d) youth management, including containment control, safety, conflict resolution and behavioral management;

(e) instruction in safety procedures and safety equipment, use of fuel, fire and life protection;

(f) instruction in emergency procedures, medical, weather signalization, fire, runaway and lost youth;

(g) sanitation procedures relating to food, water and waste;

(h) knowledge of wilderness medicine, including health issues related to acclimation and exposure to the environmental elements;

(i) CPR, standard first aid, use of first aid kit contents and use of wilderness medicine;

(j) navigation skills including map and compass use, contour and celestial navigation and global positioning system;

(k) local environmental precautions including terrain, weather upsets, poisonous plants, wildlife and proper response to adversarial situations;

(l) report writing, including the development and maintenance of logs and journals;

(m) relevant federal, state and local regulations including those of the department, bureau of land management, United States forest service, Montana fish, wildlife and parks; and

(n) therapeutic de-escalation of crisis situations and passive physical restraint techniques to ensure the protection and safety of the clients and staff. The training must include the use of physical and non-physical methods of managing youth and must be updated at least every 12 months to ensure that necessary skills are maintained.

(5) The field director shall document in each personnel record that each staff member has demonstrated proficiency in each of the required topic areas as listed above.

(6) The initial staff training and demonstration of proficiency must be implemented and documented before the staff member may count in the staff to youth ratio specified in [RULE XVI and LXVII].

(7) A program shall provide, at a minimum, 15 hours

annually of ongoing training to staff to improve proficiency knowledge of skills. Additionally, the program shall ensure certifications are maintained by staff.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXVII EXPEDITION: YOUTH/STAFF RATIO (1) Each group of youth must be staffed as follows:

(a) two staff members for the first four youth or fraction thereof and one additional staff member for every four youth or fraction thereof;

(b) each group of youth must have at least one staff member of the same gender as the genders represented in the youth group; and

(c) each youth group must include one senior field staff member.

(2) The field director has primary responsibility for field activities and must visit the field a minimum of two days a week, with no more than five days between visits.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXVIII EXPEDITION: BASIC REQUIREMENTS (1) Prior to embarking on an expedition:

(a) An itinerary of the expedition, including a written description and schedule of every planned expedition activity, and the location of each expedition camp site, must be prepared and filed at the field office.

(b) If national, state forest or other public lands will be used, arrangements must be made with the appropriate state or federal officials, and an itinerary of the expedition, including the location of each expedition camp site, must be provided to said officials.

(c) If private property will be used, arrangements must be made with the property owners.

(d) The field director shall brief all participating staff on all expedition details including:

(i) the planned route, time schedule, weather forecast and any potential hazards;

(ii) the rules for use of state or national forest or other public lands if such property will be used during the expedition;

(iii) any procedures or special circumstances unique to the expedition;

(iv) information regarding each participating youth, including background information, potential problems and any other relevant information; and

(v) goals and objectives of the case plan for each participating youth.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXIX EXPEDITION: POLICIES AND PROCEDURES

(1) Policies and procedures must be adopted by the program regarding back country etiquette and the leave no trace principle. Participating staff and youth must be trained on the policies and procedures.

(2) At a minimum, the policies and procedures must include the following principles of leave no trace:

(a) leave what you find because all natural and cultural resources are protected by law;

(b) pack it in, pack it out;

(c) properly dispose of waste that you can't pack out;

(d) plan ahead and prepare. The staff shall know and respect applicable rules and regulations and understand the risk inherent in back country travel;

(e) travel and camp on durable surfaces;

(f) minimize campfire impact and use;

(g) respect wildlife by never approaching, feeding or harassing wildlife and by securing food and garbage properly; and

(h) be considerate of other visitors by keeping group size small and by minimizing noise.

(3) Policies and procedures must be adopted by the program regarding the use of a daily expedition log which must include:

(a) daily entries regarding health problems, accidents, injuries, near misses, medications used, behavioral problems and unusual occurrences;

(b) daily notations of environmental factors such as weather, temperature, altitude and terrain;

(c) daily entries assessing each youth's hydration, skin condition, extremities and general physical condition;

(d) daily entries describing morning and evening contacts between expedition staff and field office staff;

(e) weekly entries assessing each youth's physical condition by a staff member trained as a wilderness first responder;

(f) emergency plan drills, showing date, time, staff and youth present; and

(g) descriptions of pre-site investigations for solo expeditions.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXX EXPEDITION: STAFF (1) During any expedition:

(a) expedition staff shall carry a copy of the itinerary placed on file at the field office;

(b) expedition staff shall remain in contact with the field office via satellite phone, with contacts occurring at a minimum of once each morning and once each evening;

(c) expedition staff shall possess and make use of a global positioning satellite receiver;

(d) supplies for providing emergency care must be at each expedition camp;

(e) expedition staff shall maintain the daily expedition log. Entries in the log must be made in permanent ink and signed and dated by the staff member making the entry. The daily expedition log must be filed at the field office upon return from the expedition and maintained as a part of the program's permanent record;

(f) expedition staff and youth shall implement and follow program policies and procedures regarding back country etiquette and leave no trace principles;

(g) expedition staff shall closely monitor participating youth while acclimating to the environment including temperature, climate and altitude; and

(h) when temperatures exceed 95°F or fall below 10°F, expedition staff shall take appropriate preventative measures to ensure participating youth remain free of heat or cold related illness or injuries.

(2) Upon return from any expedition:

(a) the senior field staff member shall debrief each expedition staff member and document this meeting in writing;

(b) the senior field staff member shall debrief each youth. The debriefing shall at a minimum:

(i) include a written summary of the youth's participation and progress achieved; and

(ii) be provided in written form to the placing agency and, upon request, to the youth's parents or legal guardian; and

(c) the field director shall document results of the evaluation of the conditions of the youth, interactions of youth and staff, briefings, de-briefings and compliance with program policies and procedures. The program shall retain evaluations in the youth's record.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXXI EXPEDITION: SOLO EXPERIENCE (1) If the program utilizes solo experiences as part of the therapeutic process during expeditions, the program shall have policies and procedures for the utilization of solo experiences. Policies and procedures for solo experiences, at a minimum, must require:

(a) a written solo plan that must include, but is not limited to:

(i) the goals, methods, and techniques to be used and time frames for each participant;

(ii) an evaluation of the maturity level, health and physical ability of the youth, indicating that a solo expedition is reasonable;

(iii) documented instructions on the solo experience, including expectations, restrictions, communication, environment and emergency procedures; and

(iv) documented instructions on a back up plan in case the primary plan does not work; and

(b) a staff member be designated to coordinate and implement the plan.

(2) Staff shall be familiar with the site chosen to

conduct solo experiences, and shall conduct a pre-site investigation and preparation. These activities must be documented in the daily expedition log including:

(a) a description of the terrain selected and the appropriateness for the level of participation skill of the youth;

(b) a review of hazardous conditions; and

(c) a description of arrangements made prior to the solo experience for medication, food and water drop-offs if needed.

(3) Youth must be supervised during solo experiences. Written plans for supervision must be drafted prior to the solo, and a copy of these written plans shall be placed in the daily expedition log. A plan of supervision must include at a minimum:

(a) the assignment of a specific staff member responsible for the supervision of the solo participant;

(b) predetermined procedures for:

(i) placing youth at a distance from each other and the central staff site to allow for appropriate supervision and emergency communication;

(ii) placing youth requiring special attention closer to the central staff site;

(c) a method of clearly defining physical boundaries;

(d) instruction of youth to not participate in potentially dangerous activities;

(e) notification and check-in systems including a procedure for checking the youth's emotional and physical condition daily;

(f) a requirement that visual checks be conducted at regular intervals, with the actual time between visual checks being dependent upon the youth's maturity, experience and other relevant factors as determined by the youth's condition, provided, however, that the time between visual checks may never exceed 12 hours; and

(g) emergency planning, including:

(i) instructing the youth on safety and emergency procedures, including evacuation routes;

(ii) providing each youth with signaling capabilities, including a whistle, for emergency notification;

(iii) instructing of other youth on how to respond if the emergency notification system is put into use; and

(iv) providing a check-in system should an emergency occur.

(4) The youth must be debriefed immediately after a solo expedition. The debriefing must at a minimum:

(a) include a written summary of the youth's participation and progress achieved; and

(b) be provided in written form to the placing agency and, upon request, to the youth's parents or legal guardian.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXXII EXPEDITION: PARTICIPANT CLOTHING, EQUIPMENT

AND SUPPLIES (1) Each expedition participant must have appropriate clothing, equipment and supplies for the types of activities and for the weather conditions likely to be encountered.

(2) Clothing, equipment and supplies must include at a minimum:

(a) sunscreen, which must be worn during all seasons;

(b) insect repellent if appropriate for the environmental conditions generally expected for the area and season;

(c) a commercial backpack or the materials to construct a safe backpack or bedroll;

(d) personal hygiene items necessary for cleansing;

(e) appropriate feminine hygiene supplies;

(f) wool blankets or an appropriate sleeping bag and a tarp or poncho for when the average nighttime temperature is expected to be 40°F or higher;

(g) shelter from precipitation, appropriate sleeping bag and ground pad when the average nighttime temperature is expected to be 39°F or lower;

(h) clothing appropriate for the temperature changes generally expected for the area; and

(i) a clean change of clothing at least once a week or an opportunity for the participant to wash their clothing at least once a week.

(3) A program may not remove, deny or make unavailable for any reason the appropriate clothing, equipment or supplies.

(4) Field staff shall be responsible for maintaining the safety and well being of youth and shall monitor each youth to make sure that clothing, equipment and supplies are maintained in a manner adequate to ensure the youth's safety.

(5) The field director shall develop a list of items that each youth will be in possession of during the wilderness excursion. Policy shall be in place that ensures only those items are transported into the wilderness.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXXIII EXPEDITION: COMMUNICATIONS (1) The program shall have written policies and procedures establishing a system of communication that meets the following criteria:

(a) each group away from the field office must have a satellite phone and extra charged battery packs for the satellite phone;

(b) the program must have a reliable back up communication system;

(c) the program must have a back up plan for re-establishing communications to be implemented in the event regular communications fail; and

(d) the program must develop a signal mirror communication system.

(2) The written policies and procedures must be attached to each itinerary, together with any specialized procedures necessitated by the circumstances, taking into consideration

such factors as the planned activities and the terrain.

(3) Verbal communication between each field group and the field office must occur on a regularly scheduled basis according to program procedures unless special documented arrangements have been made.

(4) The field office support personnel shall have immediate access to emergency telephone numbers, contact personnel and procedures for an emergency evacuation or field incident requiring emergency medical support.

(5) Morning and evening contacts must be established between expedition staff and support staff in the field office. These contacts must be recorded in the log at both locations.

(6) Contact must be available from expedition staff to field office on a continuous basis.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXXIV EXPEDITION: HEALTH CARE (1) Additional health care requirements for youth on expedition include the following:

(a) Each youth's hydration, skin condition, extremities and general physical condition must be monitored and documented by field staff on a daily basis.

(b) Each youth's physical condition must be assessed by a staff member trained as a wilderness first responder at least every seven days while on expedition. The assessments must be documented and must at a minimum include:

(i) blood pressure;
(ii) heart rate;
(iii) check of extremities;
(iv) condition of skin;
(v) hydration level;
(vi) allergies if any;
(vii) general physical condition;
(viii) provision of appropriate medical treatment if needed; and
(ix) emotional well being.

(c) A written plan for handling unanticipated allergic reactions while on expedition must be developed. The plan must include:

(i) training and consultation with regard to possible allergic reactions or reactions to snake and insect bites;

(ii) notations in youth records about any medication which might result in allergic reactions or other side effects; and

(iii) identification for all expedition staff about youth needing special precautions.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXXV EXPEDITION: NUTRITIONAL REQUIREMENTS (1) A program shall have and follow written policies and procedures on nutritional requirements.

(2) Each program shall have a written menu, approved by a qualified dietitian or nutritionist with knowledge of the program activities and levels, describing food supplied to the youth which must provide a minimum of 3000 calories per day.

(3) The menu must be adjusted to provide 29% to 100% increase in minimum dietary needs as energy expenditures such as exercise increases, or as the climate conditions such as cold weather dictate.

(4) Forage items may not be used toward the determination of caloric intake.

(5) Hands must be cleaned after each latrine use and prior to food preparation and food consumption.

(6) Food may not be withheld from a youth for any reason.

(7) If no fire is available for cooking food, other food of equal caloric value which does not require cooking must be available.

(8) Field staff are responsible for maintaining the safety and well being of the youth and shall monitor each youth's food intake to ensure that the youth has adequate nutrition.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

RULE LXXVI EXPEDITION: WATER REQUIREMENTS (1) A program shall have and follow written policies and procedures on expedition water requirements. At a minimum they must consist of the following:

(a) Youth must have access to potable water while hiking.

(b) The program shall provide each youth with six quarts of potable water a day, unless a youth's weight exceeds 150 pounds, then one additional quart of potable water must be provided for every 25 pounds of body weight over 150 pounds.

(c) Youth must have access to one additional quart of water for every five miles hiked.

(d) Staff shall encourage each youth to consume at least three quarts of potable water per day.

(e) In temperatures above 80°F, adequate water must be available for coating each youth's body for the purpose of cooling when needed.

(f) Water must be available at each expedition camp site. Water cache location information must be verified by field staff before the group leaves expedition camp each day.

(g) Expedition groups may not depend on aerial drops for water supply. Aerial water drops must be used for emergency situations only.

(h) Water taken by staff or youth from a natural source and used for drinking or cooking must be treated to eliminate health hazards.

(i) Each group must have a supply of electrolyte replacement, the quantities to be determined by group size and environment conditions.

AUTH: Sec. 50-5-220, MCA
IMP: Sec. 50-5-220, MCA

3. The Licensure Bureau of the Department of Public Health and Human Services (the Department) licenses and regulates various physical health care and mental health treatment facilities. The Department's authority to do so is found in Title 50, chapter 5, of the Montana Code Annotated (MCA).

In its 2003 session, the Montana Legislature enacted House Bill 524, which has been codified in statute as follows:

> 50-5-101(40)(a) "Outdoor behavior program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships or educational functions of a youth and that:
> (i) serves either adjudicated or nonadjudicated youth;
> (ii) charges a fee for its services; and
> (iii) provides all or part of its services in the outdoors.
> (b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs or other similar organizations.
>
> 50-5-220 "Licensure of outdoor behavior programs-exemption". (1) The department shall provide for licensure of a qualified outdoor behavioral program that accepts public funding. An outdoor behavioral program that does not accept public funds or government contracts is exempt from licensure.
> (2) The department shall develop administrative rules for licensure that must include program requirements, staff requirements, staff-to-youth ratios, staff training and health requirements, youth admission requirements, infectious disease control, transportation and evacuation. The department may accept accreditation by a nationally recognized accrediting or certifying body but may not require the accreditation.

These proposed rules implement the requirements specified in 50-5-101(40)(a) and 50-5-220(2), MCA.

Pursuant to the requirement in 50-5-220(2), MCA, that "the department shall develop administrative rules for licensure" which are to include "program requirements", the Department has developed rules for program structure, records, youth rights and responsibilities, youth services and the outdoor experience as follows:

For program structure, the Department proposes:

* [Rule II] License Application Process
* [Rule III] License Restrictions

* [Rule IV] License Denial, Suspension, Restriction, Revocation, or Reduction to Provisional Status and Hearing Procedures
* [Rule V] Administrator Qualifications
* [Rule VI] Administrative Policies and Procedures
* [Rule VII] Quality Assessment

For records:

* [Rule VIII] Confidentiality of Records and Information
* [Rule IX] Reports
* [Rule X] Child Abuse or Neglect and Serious Incidents
* [Rule XXX] Youth Case Records

For youth rights and responsibilities:

* [Rule XXI] Religion and Culture
* [Rule XXII] Personal Needs
* [Rule XXIII] Privacy and Individualism
* [Rule XXIV] Money
* [Rule XXV] Training and Employment
* [Rule XXVI] Youth Orientation
* [Rule XXIX] Recreation
* [Rule XXXI] Youth Rights

For youth services:

* [Rule XVIII] Social Services
* [Rule XIX] Care and Guidance
* [Rule XXVII] Placement Agreements
* [Rule XXVIII] Education

For residential services:

* [Rule XLVIII] Residential Outdoor Services: Fire Safety Requirements
* [Rule XLIX] Residential Outdoor Services: Water
* [Rule L] Residential Outdoor Services: Sewage and Waste Disposal
* [Rule LI] Residential Outdoor Services: Physical Environment

For the outdoor experience:

* [Rule LIII] Outdoor Behavioral Program: High Adventure General Requirements
* [Rule LIV] High Adventure Requirements: Swimming
* [Rule LV] High Adventure Requirements: Boating, Canoeing, Sailing, Tubing, Kayaking and White Water Rafting
* [Rule LVI] High Adventure Requirements: Archery
* [Rule LVII] High Adventure Requirements: Horseback

Riding
* [Rule LVIII] High Adventure Requirements: Trampoline
* [Rule LIX] High Adventure Requirements: Requirements for All Rock Climbing
* [Rule LX] High Adventure Requirements: Basic/Single-Pitched Rock Climbing and Rappelling
* [Rule LXI] High Adventure Requirements: Advanced/Multi-Pitched Rock Climbing
* [Rule LXII] High Adventure Requirements: Rope Courses
* [Rule LXIII] High Adventure Requirements: Hiking and Backpacking
* [Rule LXIV] High Adventure Requirements: Bicycling
* [Rule LXV] Expedition: Field Office Requirements
* [Rule LXVIII] Expedition: Basic Requirements
* [Rule LXIX] Expedition: Policies and Procedures
* [Rule LXX] Expedition: Staff
* [Rule LXXI] Expedition: Solo Experience
* [Rule LXXII] Expedition: Participant Clothing, Equipment and Supplies
* [Rule LXXIII] Expedition: Communications
* [Rule LXXIV] Expedition: Health Care
* [Rule LXXV] Expedition: Nutritional Requirements
* [Rule LXXVI] Expedition: Water Requirements

In response to the requirement in 50-5-220(2), MCA, that "the department shall develop administrative rules for licensure that must include . . . staff requirements", the Department has developed the following proposed rules:

* [Rule XI] Staff
* [Rule XII] Program Professional Staff and Qualifications
* [Rule XIII] Program Expedition Field Director Qualifications
* [Rule XIV] Program Staff Background Checks
* [Rule XV] Staff Training
* [Rule LXVI] Expedition: Staff Training
* Staff qualification requirements in the various High Adventure Requirements found in [Rules LIII through LXIV]

In response to the requirement in 50-5-220(2), MCA, that "the department shall develop administrative rules for licensure that must include . . . staff to youth ratios", the Department has developed the following proposed rules:

* [Rule XVI] Youth/Staff Ratios
* [Rule LXVII] Expedition: Youth/Staff Ratio
* Staffing ratios found in the various High Adventure Requirements found in [Rules LIII through LXIV]

In response to the requirement in 50-5-220(2), MCA, that "the

department shall develop administrative rules for licensure that must include . . . staff training requirements", the Department has developed the following proposed rules:

* [Rule XV] Staff Training
* [Rule LXVI] Expedition: Staff Training

In response to the requirement in 50-5-220(2), MCA, that "the department shall develop administrative rules for licensure that must include . . . health requirements", the Department has developed the following proposed rules:

* [Rule XLIV] Health Care
* [Rule XLVI] Medication Storage and Administration
* [Rule LXXIV] Expedition: Health Care

In response to the requirement in 50-5-220(2), MCA, that "the department shall develop administrative rules for licensure that must include . . . youth admission requirements", the Department has developed the following proposed rules:

* [Rule IX] Reports
* [Rule XXVII] Placement Agreements
* [Rule XXXII] Physical Examination
* [Rule XXXIII] Assessments

In response to the requirement in 50-5-220(2), MCA, that "the department shall develop administrative rules for licensure that must include . . . water and nutritional requirements", the Department has developed the following proposed rules:

* [Rule XX] Nutrition
* [Rule XLIX] Residential Outdoor Services: Water
* [Rule LXXV] Expedition: Nutritional Requirements
* [Rule LXXVI] Expedition: Water Requirements

In response to the requirement in 50-5-220(2), MCA, that "the department shall develop administrative rules for licensure that must include . . . infectious disease control", the Department has developed the following proposed rule:

* [Rule XLV] Infection Control

In response to the requirement in 50-5-220(2), MCA, that "the department shall develop administrative rules for licensure that must include . . . safety", the Department has developed the following proposed rules:

* [Rule XXXIX] Animals and Pets
* [Rule XL] Potential Weapons
* [Rule XLI] Contraband
* [Rule XLII] Program Requirements, Searches
* [Rule XLVII] Safety Policy
* [Rule XLVIII] Residential Outdoor Services: Fire

Safety Requirements
* [Rule LXXIII] Expedition: Communications
* Safety requirements found in the various High Adventure Requirements in [Rules LIII through LXIV]

In response to the requirement in 50-5-220(2), MCA, that "the department shall develop administrative rules for licensure that must include . . . environmental requirements", the Department has developed the following proposed rules:

* [Rule L] Sewage and Waste Disposal
* [Rule LI] Residential Outdoor Services: Physical Environment
* [Rule LXV] Expedition: Field Office Requirements
* [Rule LXIX] Expedition: Policies and Procedures

In response to the requirement in 50-5-220(2), MCA, that "the department shall develop administrative rules for licensure that must include . . . transportation", the Department has developed the following proposed rule:

* [Rule LII] Transportation

In response to the requirement in 50-5-220(2), MCA, that "the department shall develop administrative rules for licensure that must include . . . evacuation", the Department has developed the following proposed rule:

* [Rule XLIII] Emergency and Evacuation Plans

In response to the requirement in 50-5-101(40)(a), MCA, that an outdoor behavioral program "provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth" the Department has developed the following proposed rules:

* [Rule XVII] Therapeutic Treatment Program
* [Rule XXXIV] Development and Content of the Case Plan
* [Rule XXXV] Discharge Summary
* [Rule XXXVI] Behavior Management Philosophy
* [Rule XXXVII] Use of Nonviolent Crisis Intervention Strategies
* [Rule XXXVIII] Time Out

Youth are being served in outdoor behavioral programs in Montana. Similar programs in other states have failed to protect the safety of the youth. Injuries to the youth have occurred because the programs did not implement necessary safety precautions while the youth were involved in outdoor activities. Improperly trained staff have placed the youth under their supervision in dangerous situations. In his University of Idaho doctoral dissertation entitled "Program Evaluation Practices in

Wilderness Therapy for Youth at Risk", (1998), J. Carpenter pointed out that "[l]ack of industry wide evaluation and accreditation standards and enforcement . . . leaves programs at great risk for allegations of abuse, neglect, and general poor efficacy". These proposed rules address the youths' safety during the outdoor experience.

Programs may not protect the health of the youth. Infectious diseases have spread through youth groups while camping in the outdoors. Unsafe procedures for securing food and water have led to illness in the youth groups while in the wilderness. These proposed rules address the youths' health protection during the outdoor experience.

Respect for the property rights of others and the appropriate use of public lands are addressed in these proposed rules. Participants in the outdoor programs have trespassed on private land and not received the proper permits and approvals for the use of public lands. Damage to public and private lands have occurred as a result of practices by outdoor programs.

The youth served in outdoor programs have behavioral problems. Programs provide treatment for these problems in residential and outdoor settings. Outdoor behavioral programs must develop individualized treatment programs and provide therapeutic environments to address these issues. These rules assure that professional standards are used in the treatment of each youth. These rules also assure that licensed professionals provide and supervise therapeutic services.

States in our region that have developed regulations for outdoor behavior programs include Colorado, Wyoming, Utah, Idaho, and Oregon. The Department carefully reviewed these states' regulations when developing these proposed rules for Montana. The Department also contacted other state officials to better understand the strengths and weaknesses of each state's rules. The Department discussed with experts on specialized areas of the outdoor rules such as that for expeditions, rappelling, biking, and water activities. The Department further incorporated concepts from Keith C. Russell's "A Nation-Wide Survey of Outdoor Behavioral Healthcare Programs for Adolescents with Problem Behavior", published in the Journal of Experiential Education, volume 25, issue 3, 2003, which provided a useful overview of other states' outdoor behavioral programs.

4. Interested 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 Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on May 20, 2004. Data, views or arguments may also be submitted by facsimile to (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of

administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State April 12, 2004.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.85.212 pertaining to resource based relative value scale (RBRVS) reimbursement	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 13, 2004, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 3, 2004, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS) REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of this rule, the following definitions apply:

(a) "Anesthesia units" means time and base units used to compute reimbursement under RBRVS for anesthesia services. Base units are those units as defined by the medicare program. Time units are 15 minute intervals during which anesthesia is provided.

(b) "Conversion factor" means a dollar amount by which the relative value units, or the base and time units for anesthesia services, are multiplied in order to convert the relative value units to a fee for a service.

(c) "Policy adjustor" means a factor by which the product of the relative value units and the conversion factor is multiplied to increase or decrease the fees paid by medicaid for certain categories of services.

(d) "Provider's invoice cost" means the actual dollar amount paid by a medicaid provider for a specific item of durable medical equipment (DME) or supply. It does not include any markup added by the provider.

(e) "Relative value unit (RVU)" means a numerical value assigned in the resource based relative value scale to each

procedure code used to bill for services provided by a health care provider. The relative value unit assigned to a particular code expresses the relative effort and expense expended by a provider in providing one service as compared with another service~~;~~.

(f) "Resource based relative value scale (RBRVS)" means the most current version of the medicare resource based relative value scale contained in the physicians' medicare fee schedule adopted by the centers for medicare and medicaid services (CMS) of the U.S. department of health and human services and published in the Federal Register annually, ~~as amended through December 31, 2002~~ effective January 1, 2004 which is ~~hereby~~ adopted and incorporated by reference. A copy of the medicare fee schedule may be obtained from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Child and Adult Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The RBRVS reflects RVUs for estimates of the actual effort and expense involved in providing different health care services.

(g) "Subsequent surgical procedure" means any additional surgical procedure or service, except for add-ons and modifier 51 exempt codes, performed after a primary operation in the same operative session.

(h) "Usual and customary" means those charges that the medicaid provider would charge for a particular service in a majority of cases including medicaid and non-medicaid patients.

(2) Services provided by the following health care professionals will be reimbursed in accordance with the RBRVS methodology set forth in (3):

(a) physicians;
(b) mid-level practitioners;
(c) podiatrists;
(d) physical therapists;
(e) occupational therapists;
(f) speech therapists;
(g) audiologists;
(h) optometrists;
(i) opticians;
(j) providers of clinic services;
(k) providers of EPSDT services;
(l) licensed psychologists;
(m) licensed clinical social workers;
(n) licensed professional counselors;
(o) dentists providing medical services;
(p) providers of oral surgery services;
(q) providers of pathology and laboratory services; ~~and~~
(r) independent diagnostic testing facilities (IDTF)~~;~~ and
(s) school based services.

(3) Except as set forth in (8), (9), (10) and (11) the fee for a covered service provided by any of the provider types specified in (2) is determined by multiplying the ~~relative value units~~ RVUs determined in accordance with (7) by the conversion factor ~~specified in (4)~~, which is required to achieve the overall budget appropriation listed under (4), and then

multiplying the product by a factor of one plus or minus the applicable policy adjustor as provided in (5), if any~~;~~ . ~~provided, however, that rates for procedure codes included in the conversion to the RBRVS reimbursement methodology are:~~

(4) Fees will be set to achieve the following budget appropriations:

(a) for state fiscal year 1998, no less than 85% of and no more than 140% of the medicaid fee for that procedure in state fiscal year 1997;

(b) for state fiscal year 1999, no less than 80% of and no more than 145% of the medicaid fee for that procedure in state fiscal year 1997;

(c) for state fiscal year 2000:

(i) those codes paid at 80% of the level of state fiscal year 1997 reimbursement in state fiscal year 1999 shall be frozen at that level;

(ii) those codes restricted to 145% of the medicaid fee of the level of state reimbursement in state fiscal year 1997 which were at the lowest percentage of medicare reimbursement in state fiscal year 1999 shall receive a 1% increase in provider fees~~;~~.

(d) for state fiscal year 2001:

(i) those codes paid at 80% of the level of state fiscal year 1997 reimbursement in state fiscal year 1999 shall be frozen at that level;

(ii) those codes restricted to 145% of the medicaid fee of the level of state reimbursement in state fiscal year 1997 which were at the lowest percentage of medicare reimbursement in state fiscal year 2000 shall receive a 1% increase in provider fees.

(e) for state fiscal year 2002:

(i) those codes paid at 80% of the level of state fiscal year 1997 reimbursement in state fiscal year 2001 shall be frozen at that level;

(ii) those codes restricted to 145% of the medicaid fee of the level of state reimbursement in state fiscal year 1997 which were at the lowest percentage of medicare reimbursement in state fiscal year 2001 shall receive a 2.3% increase in provider fees.

(f) for state fiscal year 2003:

(i) those codes paid at 80% of the level of state fiscal year 1997 reimbursement in state fiscal year 2001 shall be frozen at that level less 2.6%;

(ii) those codes restricted to 145% of the medicaid fee of the level of state reimbursement in state fiscal year 1997 which were at the lowest percentage of medicare reimbursement in state fiscal year 2002 shall be frozen at their state fiscal year ~~(SFY)~~ 2002 levels, less 2.6%~~;~~.

(g) effective state fiscal year ~~(SFY)~~ 2004, all codes will be paid at the federal RVUs without being frozen at any level;

(h) for state fiscal year 2005, no rate increase or decrease is allocated and fees will be budget neutral.

~~(4) The conversion factor used to determine the medicaid payment amount for the services covered by this rule for state fiscal year 2004 is:~~

~~(a) $31.18 for medical and surgical services, as specified in (2); and~~

~~(b) $24.94 for anesthesia services, which is 80% of the medical/surgical conversion factor.~~

(5) Subject to funding, a policy adjustor of up to 10% may be applied to maternity related services and family planning services.

(a) The department's list of specific maternity related services and family planning services as amended through July 1, 1997 is ~~hereby~~ adopted and incorporated by reference. A copy of the list is available on request from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Child and Adult Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(6) The RVUs for most services are adopted from the ~~resource based relative value scale (~~RBRVS~~)~~. For most services for which the RBRVS does not specify RVUs, the department sets those RVUs.

(7) The RVUs for a medicaid covered service provided by any of the provider types specified in (2) are calculated as follows:

(a) if medicare sets RVUs, the medicare RVUs are applicable;

(b) if medicare does not set RVUs but medicaid sets RVUs, the medicaid RVUs are set in the following manner:

(i) convert the existing dollar value of a fee to an RVU value;

(ii) evaluate the RVU of similar services and assign an RVU value; or

(iii) convert the average by-report dollar value of a fee to an RVU value.

(8) Except for physician administered drugs as provided in ARM 37.86.105(3), clinical, laboratory services and anesthesia services, if neither medicare nor medicaid sets RVUs, then reimbursement is by-report.

(a) Through the by-report methodology the department reimburses a percent of the provider's usual and customary charges for a procedure code where no fee has been assigned. The percentage is determined by dividing the previous state fiscal year's total medicaid reimbursement for RBRVS provider covered services by the previous state fiscal year's total medicaid billings.

(b) For state fiscal year ~~2004~~ 2005, the "by-report" rate is 47% of the provider's usual and customary charges.

(9) For clinical laboratory services for which there is an established fee:

(a) the department pays the lower of the following for procedure codes with fees:

(i) the provider's usual and customary charges for the service; or

(ii) 60% of the medicare fee schedule for physician offices and independent labs and hospitals functioning as independent labs; or

(iii) the established medicaid fee.

(b) for clinical laboratory services for which there is no established fee, the department pays the lower of the following

for procedure codes without fees:

(i) the provider's usual and customary charges for the service;

(ii) the rate established using the by-report methodology; or

(A) for purposes of ~~this subsection~~ (9)(b) through (9)(b)(iii), the by-report methodology means averaging 50 paid claims for the same code that have been submitted within a 12 month span and then multiplying the average by the amount specified in (8)(b).

(iii) the historical comparative value of the procedure as indicated by the reimbursement amount paid by medicaid and other third party payors for the same procedure within the last 12 months.

(10) For anesthesia services the department pays the lower of the following for procedure codes with fees:

(a) the provider's usual and customary charges for the service;

(b) a fee determined by multiplying the anesthesia conversion factor by the sum of the applicable base and time units, and then multiplying the product by a factor of one plus or minus the applicable policy adjustor, if any~~.~~;

(c) the department pays the lower of the following for procedure codes without fees:

(i) the provider's usual and customary charges for the services; or

(ii) the by-report rate.

(11) For equipment and supplies:

(a) the department pays the lower of the following for durable medical equipment (DME) items with fees:

(i) the provider's invoice cost for the DME; or

(ii) the medicaid fee schedule as provided in ARM 37.86.1807.

(b) the department pays the lower of the following for DME items without fees:

(i) the provider's invoice cost for the DME; or

(ii) the by-report rate provided in (8)(b).

(c) except for the bundled items as provided in (13), the department pays the lower of the following for supply items with fees:

(i) the provider's invoice cost for the supply item; or

(ii) the medicaid fee schedule as provided in ARM 37.86.1807.

(d) except for bundled items as provided in (13), the department pays the lower of the following for supply items without fees:

(i) the provider's invoice cost for the supply item; or

(ii) the by-report rate provided in (8)(b).

(12) Subject to the provisions of (12)(a), when billed with a modifier, payment for procedures established under the provisions of (7) is a percentage of the rate established for the procedures.

(a) The methodology to determine the specific percent for each modifier is as follows:

(i) The department obtains information from medicare and other third party payers regarding the comparative value utilized for payment of procedures billed with modifiers.

(ii) The department establishes a specific percentage for each modifier based upon the purpose of the modifier, the comparative value of the modified service and the medical insurance industry trend of reimbursement for the modifier.

(iii) The department's list of the specific percents for the modifiers used by medicaid as amended through July 1, 1997 is ~~hereby~~ adopted and incorporated by reference. A copy of the list is available on request from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Child and Adult Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(iv) Notwithstanding any other provision, procedure code modifiers "80", "81", "82", and "AS", used by assistant surgeons shall be reimbursed at 16% of the department's fee schedule.

(v) Notwithstanding any other provision, procedure code modifier "62" used by co-surgeons shall be reimbursed at 62.5% of the department's fee schedule for each co-surgeon.

(vi) Notwithstanding any other provision, subsequent surgical procedures shall be reimbursed at 50% of the department's fee schedule.

(13) In applying the RBRVS methodology set forth in this rule, medicaid reimburses in accordance with medicare's policy on the bundling of services, as set forth in the physicians' medicare fee schedule adopted by ~~the centers for medicare and medicaid services of the U.S. department of health and human services~~ CMS and published in the Federal Register annually, whereby payment for certain services constitutes payment for certain other services which are considered to be included in those services.

(14) Providers must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained in the federal health care administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the ~~health policy services~~ child and adult health resources division at the address previously stated in this rule.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

3. The Medicaid Program provides medical assistance to low-income residents of Montana who meet the eligibility requirements. The State of Montana and the federal government jointly fund the program. This rule amendment is necessary to update the Resource Based Relative Value Scale (RBRVS) fees in accordance with the most recently proposed relative value units(RVUs) adopted by Centers for Medicare and Medicaid (CMS). The RVUs are backed by cost research done to assure services are reimbursed appropriately. Work units, malpractice and office/facility practice expenses are included in the RVU calculation.

This administrative rule is updated annually to establish the July fee changes and incorporate the revision of the by-report reimbursement rate, which is set based on actual claims history from the most recent period. This change affects very few codes.

The RBRVS rule amendment incorporated the revision of the RVUs. With this rule amendment the Department is deleting a reference to a specific number for the conversion factor. Instead, it is stating its methodology which is that the conversion factor is set to achieve the overall budget appropriation listed under (4). This value is driven by availability of funding and updated federal RVUs.

Leaving ARM 37.85.212 unchanged is not an option, as the RBRVS reimbursement system requires annual updates to RVUs.

This amendment also adds the term school based services to the list of services reimbursed by the RBRVS methodology. This is not a change in practice. School based services were erroneously omitted from the list in the past.

The proposed amendment to ARM 37.85.212 impacts approximately 8,000 Medicaid RBRVS providers and 88,000 Medicaid clients that utilized these services in SFY 2003.

4. The Department proposes these rule changes will be effective July 1, 2004.

5. Interested 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 Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on May 20, 2004. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State April 12, 2004.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.86.3806, 37.86.3810 and 37.86.3811 pertaining to case management services for children at risk of abuse and neglect	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 22, 2004, the Department of Public Health and Human Services proposes to amend the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 10, 2004, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.3806 MEDICAID REIMBURSED CASE MANAGEMENT SERVICES FOR CHILDREN AT RISK OF ABUSE AND NEGLECT, ELIGIBILITY (1) A child is eligible for medicaid reimbursed case management services for children at risk of abuse or neglect if the child is:

(a) 12 years or younger;

(b) at risk of abuse or neglect but is not at risk of immediate removal from the home; and

(c) not receiving case management services from any other case management providers.

(2) A child is at risk of abuse or neglect if:

(a) a provider of children at risk of abuse or neglect case management services determines the child to be at risk of abuse or neglect; and

(b) the child:

(i) has been referred to the child protective services program of the department based on the determination; or

(ii) even though not referred to the department, has high potential for abuse as indicated by the standardized partnership to strengthen families' risk referral (form PSF-01) and as verified by a partnership provider through the standardized assessment process utilizing the family life survey (form PSF-20), the life experiences survey (form PSF-21), and the basic family needs survey (PSF-23). The department adopts and

incorporates by reference the PSF forms referred to in this rule. A copy of the forms may be obtained from the Department of Public Health and Human Services, Child and Family Services Division, 1400 Broadway, P.O. Box 8005, Helena, MT 59620-8005.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, MCA

37.86.3810 MEDICAID REIMBURSED CASE MANAGEMENT SERVICES FOR CHILDREN AT RISK OF ABUSE AND NEGLECT, PROVIDER REQUIREMENTS

(1) These requirements are in addition to those requirements contained in ~~the rule~~ ARM Title 37, chapter 85, subchapter 4 and ~~statutory provisions~~ Title 53, chapter 6, MCA, as ~~generally~~ applicable to medicaid providers.

~~(2) To be qualified as a provider of case management services for children at risk of abuse or neglect, an entity must:~~

~~(a) be approved by the department;~~

~~(b) have the capacity to provide the full range of case management services;~~

~~(c) have a signed collaborative agreement with the child protective services program of the department and other key child and family services organizations in the county or counties where case management is being provided such as the county health department, county extension services, the community mental health programs, county public schools, and private child and family services organizations in order to avoid duplication of services and to promote effective community level networking;~~

~~(d) be available to clients in crisis on a 24-hour basis and be able to identify a crisis situation and respond accordingly;~~

~~(e) employ case managers who have a 2 year degree in human services from an accredited institution or 2 years experience in a related field;~~

~~(f) employ a case management supervisor who:~~

~~(i) holds a masters degree, bachelor's degree, or relevant professional certification in a related health or human service field; and~~

~~(ii) has at least 5 years of relevant experience; and~~

~~(g) to accommodate special agency and geographic needs and circumstances, exceptions to the staffing requirements may be allowed if approved by the department.~~

(2) Case management providers for children at risk of abuse and neglect include:

(a) the department's child and family services division (CFSD); or

(b) a case management agency under contract with CFSD.

(3) A case management agency under contract with CFSD, to provide in-home services must:

(a) have the capacity to provide assessment, case coordination and referral, and case plan development and monitoring;

(b) have a signed collaborative agreement with the child

protective services program of the department and other key child and family services organizations in the county or counties where case management is being provided, such as the county health department, county extension services, the community mental health programs, county public schools, and private child and family services organizations in order to avoid duplication of services and to promote effective community level networking;

(c) be available to clients in crisis on a 24-hour basis and be able to identify a crisis situation and respond accordingly;

(d) employ case managers who have a two year degree in human services from an accredited institution or two years experience in a related field;

(e) must seek approval from the department for any exceptions to the staff requirements. The department has the discretion to approve exceptions to the staffing requirements based on special circumstances; and

(f) employ a case management supervisor who:

(i) holds a masters degree, bachelors degree, or relevant professional certification in a related health or human service field; and

(ii) has at least five years of relevant experience.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, MCA

37.86.3811 MEDICAID REIMBURSED CASE MANAGEMENT SERVICES FOR CHILDREN AT RISK OF ABUSE AND NEGLECT, REIMBURSEMENT

(1) ~~Case~~ Contracted agencies providing case management services ~~for~~ to children at risk of abuse and neglect are reimbursed at the lower of the following:

(a) the providers customary charge to the general public for the service; or

(b) $6.72 for each 15 minutes of service.

(2) Case management services provided by the CFSD for children at risk of abuse and neglect is a monthly rate established for each state fiscal year. The monthly rate is determined on a statewide basis on July 1 of each year by dividing the average monthly costs for the delivery of case management services for the previous year by the average monthly service population for the previous year.

(3) A unit of service is any targeted case management service provided during the month to a medicaid eligible child by the social worker employed by the department.

(4) Only one unit of service per month per medicaid eligible child can be billed.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, MCA

3. Federal and state law allow Medicaid reimbursement for targeted case management (TCM) services provided to children at risk of abuse or neglect. The existing rules establish the

reimbursement rate for TCM services provided by entities other than the State of Montana through the Department of Public Health and Human Services (DPHHS). These rule changes provide a method of billing for TCM services provided by DPHHS or its contractors.

A child protection agency, such as the DPHHS Child and Family Services Division (CFSD), is allowed under federal and state law to bill Medicaid for the TCM services it provides. The services may be provided by DPHHS CFSD agency personnel or through DPHHS CFSD's contractors. These rule amendments state the rate methodology DPHHS CFSD must use as a provider of TCM. The proposed rule amendments also make some editing changes to improve clarity and incorporate by reference the forms that contracted providers must use to determine if a child is at a high risk for abuse.

The rule changes are necessary because 53-6-113(2), MCA, requires DPHHS to provide Medicaid services by the most cost effective method available. One method DPHHS uses to carry out this statutory requirement is to attempt to maximize Federal funding. Federal law, Montana Medicaid's State Plan and these rules allow TCM as a medicaid service. These rule changes are necessary to increase federal funding by providing a federal match for state dollars spent of TCM services provided by Department staff.

ARM 37.86.3806

This rule amendment incorporates by reference as rule the text of the assessment forms currently referenced in the rule.

ARM 37.86.3810

This rule is being amended to clearly define what entities are TCM providers. Editing changes were also made to clarify that to bill Medicaid for TCM services, the provider must have the capacity to provide assessment, case coordination and referral, case plan development and monitoring, and must work collaboratively with other service organizations.

ARM 37.86.3811

ARM 37.86.3811(1) is amended for clarity because ARM 37.86.3811(2) is being added to this rule. There is a reimbursement rate for contracted agencies providing case management services. There is no change to the rate. The rate is the lower of the provider's customary charge or $6.72 for each 15 minutes of services.

ARM 37.86.3811(2) states the Medicaid reimbursement for the Child and Family Services Division of the Department when it is billing as a provider of case management services. The reimbursement is based on a unit of service. A unit of service

is any targeted case management service provided during the month to a Medicaid eligible child by the social worker employed by the Department and only one unit of service per month per Medicaid eligible child is billed.

The Department considered alternative billing processes for TCM services billed by CFSD to Medicaid. It chose the process described in these rules because they appear to be the most efficient and cost effective.

The cumulative amount of the proposed amendments is approximately a $900,000 increase in federal funding for SFY 04. The number of persons affected will be approximately 25 to 30 targeted case management providers for children at risk of abuse and neglect.

4. The Department proposes that these amendments will be applied retroactively to July 1, 2002. This will allow the Department to maximize the federal Medicaid funds available for TCM services. There is no negative impact to individual or entities.

5. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on May 20, 2004. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on May 20, 2004.

7. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 3

based on the 25 to 30 targeted case management providers affected by rules covering case management for children at risk of abuse and neglect.

Dawn Sliva	/s/ Gail Gray
Rule Reviewer	Director, Public Health and Human Services

Certified to the Secretary of State April 12, 2004.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.78.102, 37.78.103, 37.78.106, 37.78.206, 37.78.216, 37.78.506, 37.78.806, 37.78.807, 37.78.810 and 37.78.826, and repeal of 37.78.817, 37.78.825 and 37.78.830 pertaining to Temporary Assistance for Needy Families Program (TANF)	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Interested Persons

1. On May 18, 2004, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 10, 2004, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) remains the same.

(2) The Montana TANF cash assistance manual in effect ~~January 1~~ July 1, 2004 is adopted and incorporated by this reference. A copy of the Montana TANF cash assistance manual is available for public viewing at each local office of public assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Manual updates are also available on the department's website at www.dphhs.state.mt.us.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211 and 53-4-601, MCA

37.78.103 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF): DEFINITIONS The following definitions apply to this chapter:

(1) through (5) remain the same.

(6) "Case management" means the process of formulating and developing and maintaining ~~a family investment agreement or~~ a WoRC employability plan for a participant.

(7) and (8) remain the same.

(9) "Community service" means any hours a participant volunteers in a recognized volunteer position.

(9) through (12) remain the same but are renumbered (10) through (13).

~~(13)~~ (14) "Educational activities" ~~means high school education or the equivalent thereof, basic and remedial education, and English as a second language.~~ means activities that include but are not limited to:

(a) independent GED preparation;

(b) basic and remedial education to provide participant with brushup skills as needed for employment;

(c) English proficiency for participants unable to understand, read, speak or write well enough to allow employment commensurate with participant's employment goal;

(d) attending high school or alternative high schools; and

(e) attending GED preparation courses.

~~(14)~~ (15) "Eligibility case manager" means the person who determines eligibility for benefits, ~~assists clients to develop their family investment agreement, monitors the agreements,~~ makes referrals to other resources, monitors the participants' progress and authorizes benefits.

(15) remains the same but is renumbered (16).

~~(16)~~ (17) "Employment and training activities" means the activities in the ~~family investment agreement~~ WoRC employability plan for all participants ~~other than activities related to immunization and health screening requirements~~.

(17) and (18) remain the same but are renumbered (18) and (19).

~~(19)~~ (20) "Family investment agreement (FIA)" means a written document ~~outlining TANF cash assistance program requirements and the employment and training activities a~~ designating the case management entity who will assist the family ~~will participate~~ in ~~to work~~ working toward self-sufficiency.

(20) through (21)(c) remain the same but are renumbered (21) through (22)(c).

~~(22)~~ (23) "General ~~education development~~ equivalency diploma (GED)" means ~~training~~ a certificate provided to persons ~~who need a high school education or its equivalent~~ who pass standardized tests in place of a high school diploma.

(23) through (27) remain the same but are renumbered (24) through (28).

~~(28) "Individual job search" means the provision of employment counseling and information to employment and training participants on a one-to-one basis in order to give the participant guidance and support in obtaining employment.~~

(29) remains the same.

~~(30) "Job readiness activities" means instruction in job seeking and job retention skills, career definition, work ethic and attitudes, and dissemination of occupational and labor market information.~~

(30) "Job search" means activities that include but are not limited to:

(a) completing and submitting job applications;

(b) completing resumes or master applications; and

(c) career exploration, to investigate details/duties of a career path to determine true interest in a career. Examples include researching the dictionary of occupational titles, exploring the internet and interviewing with an employer or employee.

(31) "Job skills training~~" means vocational training for a specific occupational area conducted by an instructor in a non-work site or a classroom setting.~~ directly related to employment" means training that may include but is not limited to:

(a) activities designed to familiarize participants with work place expectations and help them develop appropriate work behavior;

(b) classes that contribute to and prepare the participant for employment (e.g., skill specific classes, resume preparation and writing, interviewing skills and self-esteem); and

(c) any post secondary education not considered vocational educational training.

(32) through (38) remain the same.

(39) "Participation hours" means the number of hours which a TANF cash assistance participant must perform employment and training activities as specified in the participant's ~~family investment agreement~~ WoRC employability plan.

(40) remains the same.

~~(41) "Post secondary education (PSE)" means a field of instruction approved by the Montana commissioner of higher education and offered by an institution of higher education.~~

~~(42)~~ (41) "Screening guide" means the tool by which the ~~eligibility~~ WoRC case manager in conjunction with the ~~FAIM~~ participant determines appropriate employment and training activities for the participant.

(43) through (53) remain the same but are renumbered (42) through (52).

(53) "Tribal native employment works (NEW)" means an employment and training program operated by a federally recognized tribe or Alaskan native organization.

(54) through (57) remain the same.

(58) "Vocational educational training" means the pursuit of a degree or certificate less than a bachelor degree.

(59) "WoRC employability plan" means a negotiated document listing employment and training activities, and mutual obligations of the WoRC program and the participant regarding the course of action leading to the individual's employment and the number of hours and the time limits within which such activities and obligations shall be performed.

~~(58)~~ (60) "Work activities" means all ~~family investment~~

~~agreement (FIA) activities as allowed under the waiver obtained from adult children and family under the Social Security Act~~ activities used to meet federal participation requirements at 45 CFR 261.30.

(61) "Work experience" means assessment, preparation, orientation and placement in a formal job site training experience.

~~(59)~~ (62) "Work readiness component (WoRC)" means the intensive case management component of the TANF cash ~~employment and training program~~ assistance program.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211 and 53-4-601, MCA

37.78.106 TANF: SAFEGUARDING AND SHARING INFORMATION

(1) remains the same.

(2) The department may use or share confidential information concerning an applicant for or participant in TANF, without notice or permission of the person for the following purposes:

(a) and (b) remain the same.

(c) the conduct of child support activities; ~~or~~

(d) for other purposes authorized by law~~.~~; or

(e) notification of an appropriate person, authority or other entity that an applicant or participant is making threats to harm himself or herself or to harm others, in order to prevent or lessen the threatened harm.

(3) through (6) remain the same.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-105, 53-2-201, 53-2-211, 53-3-111 and 53-4-211, MCA

37.78.206 TANF: GENERAL ELIGIBILITY REQUIREMENTS

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

(3) The following are not eligible for TANF cash assistance:

(a) through (j) remain the same.

(i) refusal may occur verbally, in writing, or by not responding in any manner; ~~or~~

(k) all members of the assistance unit which includes a specified caretaker relative or minor child who fails or refuses without good cause to negotiate and sign a family investment agreement~~.~~; or

(l) all members of the assistance unit if any member of the assistance unit who is required by ARM 37.78.806 to participate in employment and training fails or refuses without good cause to negotiate and sign a WoRC employability plan.

(4) through (6)(a)(i) remain the same.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211 and 53-4-231, MCA

37.78.216 TANF: TANF CASH ASSISTANCE FAMILY INVESTMENT AGREEMENT AND WORC EMPLOYABILITY PLAN (1) The family investment agreement (FIA) is a negotiated document listing ~~eligibility requirements, employment and training activities, and mutual obligations of the state and the participant regarding the course of action leading to the individual's employment and the number of hours and the time limits within which such activities and obligations shall be performed~~ a referral to either the WoRC program for case management or to tribal native employment works (NEW) for case management.

(a) All participants in the TANF cash assistance programs are required to negotiate and comply with their FIA as a condition of eligibility in the TANF cash assistance program. A participant who is exempt from time limits as specified in ARM 37.78.202 must enter into a FIA. ~~The FIA activities for a participant who is eligible for TANF extended benefits will take into consideration any limitations which are the basis for the extension.~~

(b) The FIAs will be reviewed at least once every ~~three~~ 12 months. They may also be renegotiated as needed or at the request of either the participant or the eligibility case manager.

(c) remains the same.

~~(d) Failure to perform the activities required in the FIA on a timely basis will result in sanctions in accordance with ARM 37.78.506.~~

(2) remains the same.

(3) The WoRC employability plan is a negotiated document listing employment and training activities, and mutual obligations of the WoRC program and the participant regarding the course of action leading to the individual's employment and the number of hours and the time limits within which such activities and obligations shall be performed.

(a) All individuals who are referred to the WoRC program are required to negotiate and comply with their WoRC employability plan as a condition of eligibility in the TANF cash assistance program. A participant who is exempt from time limits as specified in ARM 37.78.202 who is referred to WoRC must enter into a WoRC employability plan. The WoRC employability plan activities for a participant who is eligible for TANF extended benefits will take into consideration any limitations which are the basis for the extension.

(b) The WoRC employability plan is renegotiated as needed or at the request of either the participant or the WoRC case manager.

(c) Once the employability plan is completed, it is signed by the participant and the WoRC case manager. The participant receives a signed copy.

(d) Failure to perform the activities required in the WoRC employability plan on a timely basis will result in sanctions in accordance with ARM 37.78.506.

(4) Because entering into a WoRC employability plan is a condition of eligibility for TANF cash assistance when the individual is referred to WoRC, failure or refusal without good

cause to enter into a WoRC employability plan initially will result in the denial of assistance for the entire assistance unit.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-601, 53-4-606 and 53-4-608, MCA

37.78.506 TANF: TANF CASH ASSISTANCE; SANCTIONS (1) If any member of the assistance unit fails or refuses without good cause as defined in ARM 37.78.508 to comply with an employment related or training activity as defined in (8), the first sanction will result in ~~by means of~~ the reduction of the monthly TANF cash assistance payment by an amount equal to one person's share of the payment for one month. The second and subsequent sanctions will result in case closure and the imposition of a one month ineligibility period. This rule does not apply to households who are receiving TANF extended benefits as defined in ARM 37.78.202. The imposition of a sanction ends the currently negotiated FIA and WoRC employability plan the last day of the penalty month. A sanction is considered imposed even if a fair hearing is requested and continued benefits are issued.

(2) During the penalty period for the first sanction, the income and resources of a sanctioned individual will continue to be considered in determining eligibility and grant amount for the assistance unit.

(3) For TANF cash assistance program participants, the penalty period for the first sanction will count toward the time limits provided in ARM 37.78.201.

(4) A sanctioned individual must negotiate and sign a new family investment agreement prior to the end of the sanction penalty period for the first sanction or the household's TANF cash assistance will terminate at the end of the sanction penalty period.

(5) If the TANF cash assistance case closes because the sanctioned individual did not end the sanction by negotiating a new ~~family investment agreement (~~FIA~~)~~ during the penalty period for the first sanction, the household must serve a one month ineligibility period as long as the sanctioned individual is a required filing unit member.

(6) through (7)(b) remain the same.

(8) "Employment-related or training activities", as specified in (7)(a), means activities specified on the ~~family investment agreement~~ WoRC employability plan or in the tribal NEW plan which are directly intended to promote economic self-sufficiency. ~~"Employment-related or training activities" does not include family strengthening activities; early periodic screening, diagnosis and treatment; participation log and travel; nor negotiation of a new family investment agreement.~~

(9) remains the same.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-601, 53-4-608 and 53-4-717, MCA

37.78.806 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: PARTICIPATION (1) A person who is eligible for the TANF cash assistance program is required to participate in employment and training as provided in these rules. All adults, minor parents, teen parents, and minor children 16 or 17 who are not attending school or an equivalency program full time must participate in employment and training ~~or~~ activities as indicated in the ~~FIA~~ WoRC employability plan if they are referred to the WoRC program for case management.

~~(2) Participants in single and two-parent households may be required to participate in the work readiness component (WoRC).~~

~~(3) Placement of persons into TANF employment and training services will be based upon the following factors:~~

~~(a) the suitability of the available services for meeting the person's needs as identified in the screening guide or by the eligibility case manager; and~~

~~(b) the availability of the necessary services.~~

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

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

37.78.807 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING ACTIVITIES (1) Participants in TANF cash assistance, regardless of whether they are members of a single-parent or two-parent family, may, in accordance with their ~~FIA~~ WoRC employability plan, subject to availability in their community ~~and as long as Montana has a waiver for work participation activities recognized by the federal agency~~, participate in the following activities:

(a) ~~job readiness training~~ paid employment or self employment. The hours counted for self employment beyond the first two months are the gross wages divided by minimum wage;

~~(b) job development and placement;~~

~~(c) on-the-job training; and~~

~~(d)~~ (b) work experience ~~training~~ placement (WEX) as defined at ARM 37.78.103;

~~(e) post-secondary training or education approved in accordance with ARM 37.78.825.~~

(c) job search as defined at ARM 37.78.103. Job search is limited for each participant in each federal fiscal year by federal rule;

(d) community service as defined at ARM 37.78.103;

(e) vocational educational training as defined at ARM 37.78.103. Vocational educational training is limited in a lifetime for each participant by federal rule;

(f) ~~appropriate volunteer activities specified in the FIA;~~ job skills training directly related to employment as defined at ARM 37.78.103. Job skills training related to employment is limited to 10 hours per week per individual for single parent households and five hours per week per individual for two parent households; and

(g) ~~short-term skills training for a period not to exceed~~

~~six months;~~ educational activities as defined at ARM 37.78.103;

(i) Educational activities are limited to individuals who do not have a high school diploma or GED.

(ii) Educational activities are limited for individuals 20 years of age or older to 10 hours per week per individual for single parent households and five hours per week per individual for two parent households.

~~(h) individual or group job search; or~~

~~(i) educational activities to qualify for a high school diploma or GED equivalency and remedial adult educational activities.~~

~~(2) The eligibility case manager may refer TANF cash assistance program participants to one single WoRC activity for the duration of a class or training if there is space in that specific class or training. Participants entering WoRC in this manner will be enrolled for the duration of the class or training only.~~

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

37.78.810 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: WORK EXPERIENCE ~~PROGRAM~~ PLACEMENT (WEX) (1) The work experience placement (WEX) component is an activity of TANF employment and training designed to improve the employability of participants by assigning a participant to train in a nonprofit organization or public agency or in a for profit private agency. The specific purposes of the work experience placement component are to:

(a) through (c) remain the same.

(2) After consulting with the participant and giving due consideration to the participant's preferences, the department shall determine whether the participant shall participate in ~~the work experience program (~~WEX~~)~~ rather than in some other component, what work site the participant will be assigned to and how many hours per week the participant shall be required to participate. However, participants may not be required to participate more than 40 hours per week in work experience component activities, including hours spent in volunteer activities or paid employment.

(3) through (4) remain the same.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

37.78.826 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: REQUIREMENTS FOR SATISFACTORY PROGRESS IN EDUCATIONAL, WORK AND TRAINING ACTIVITIES (1) Satisfactory progress in educational activities ~~and post-secondary education in employment and training~~ must be made in accordance with the requirements of the institution the participant is attending.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

3. The rules 37.78.817, 37.78.825 and 37.78.830 as proposed to be repealed are on pages 37-17117, 37-17130 and 37-17137 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

4. The Temporary Assistance for Needy Families (TANF) cash assistance program provides cash assistance to eligible low income Montanans. The program is jointly funded by the State and Federal governments and is administered by the State in accordance with Federal and State law and regulations.

The proposed amendment to ARM 37.78.102 incorporates the TANF cash assistance policy manual and proposed manual changes effective July 1, 2004. The TANF policy manual is published to provide guidance to employees of county offices of public assistance who determine eligibility for TANF. It is updated periodically to clarify policies or procedures which may be unclear and to notify county office employees of changes in policies and procedures. The TANF manual and draft manual material with proposed changes are available for review in each County Public Assistance Office so that all interested parties may comment on the Department's policies and offer suggested changes. The proposed manual changes are also available for public viewing on the Department's website, www.dphhs.state.mt.us/legal_section/proposed_manual_changes.htm. The policies or pages in the manuals that are being changed effective July 1, 2004 are clearly marked on the proposed manual replacement materials. The amendment of ARM 37.78.102 is necessary to adopt the changes to the policy manual in the administrative rules.

One change to the TANF manual concerns the policy governing eligibility of parents/caretaker relatives who have joint custody of the minor child for whom the parent/caretaker relative is seeking cash assistance. TANF manual section 201-2 currently states that the minor child must be living with the parent/caretaker relative the greater part of each benefit month in order for the parent/caretaker relative to receive TANF assistance for the child and himself/herself. This section is being changed to provide that the child must be living with the parent/caretaker relative the substantially greater part of each benefit month when the custody arrangement is examined on an annual basis. If the child truly spends exactly 50% of the time with each parent, TANF assistance may be available for the child, but only if the income and resources of both parents and their respective spouses and children are considered in determining financial need.

Clarification is needed because Eligibility Case Managers are seeing more joint custody orders from the courts where the child spends approximately 50% of the time with each parent. Clear

policy guidance is needed to determine whether a parent is eligible for assistance for a child who spends almost equal amounts of time with both parents.

The manual is being revised to state that the child must spend the substantially greater part of each month, rather than merely the greater part of each month, with the parent who is seeking assistance, because the Department has determined that one parent should not get assistance for a child who spends only a few days more each month with that parent than with the other. Additionally, the manual is being revised to specify that eligibility is not based on where the child spends the most time in a single month but must be determined on the basis of living arrangements for an entire year. The reason for this is that a true 50/50 shared arrangement may not appear as such when looking at where the child lived in a single month. For example, if two parents share their child in a one week on, one week off arrangement, one parent might have the child one more day than the other parent in a particular month, due to the way the weeks fall in that month. However, if this arrangement is examined on an annual basis, it is clear that each parent has the child for 26 weeks. This constitutes 50/50 shared custody, in which event the income and resources of both parents and their families would have to be considered to determine eligibility, rather than one parent receiving assistance based solely on the income and resources of that one parent.

When a parent applies for assistance for a child of whom the parent has joint custody, it is currently the practice of eligibility workers to request that the applicant or participant contact the other parent to verify how much time the child spends with each parent, although Section 201-2 does not specifically state that the other parent must be contacted. It has been the practice to seek a statement about where the child lives from the parent who is not seeking assistance because child support will be sought from that parent if the first parent is found to be eligible for assistance for their child. Section 201-2 is now being revised to state specifically that the preferred form of verification is statements from both parents of the child as to what the visitation arrangement is. However, Section 201-2 will further state that in cases of documented domestic violence the applicant does not have to get a statement from the other parent but can provide statements from any individual who has personal knowledge of the visitation schedule. This policy is being adopted because it is not reasonable to request the applicant or participant to obtain a statement from the abusive spouse where domestic violence has been documented.

Finally, a provision has been added indicating that if one parent is providing care for the child or children during the other parent's scheduled visitation while the other parent works, rather than the other parent hiring a child care provider, the child is not considered to be living with the

first parent during the time that parent is providing care for purposes of calculating how much time the child lives with each parent; rather, the child is considered to be living with the parent who has the scheduled visitation during this time. The Department considers the child to be living with the parent whose visitation time it is even though the first parent is providing care because the parent with scheduled visitation has care and control of the child and could choose a different child care provider rather than the other parent.

The proposed amendments to ARM 37.78.103, the TANF definitions rule, are necessary to change certain definitions due to changes in the TANF program as a result of the loss of the Families Achieving Independence in Montana (FAIM) waiver. The FAIM waiver, obtained when the Aid to Families with Dependent Children (AFDC) program was in existence, allowed the Department to administer its cash assistance program for needy families without complying with certain federal requirements. In 1996 Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) which replaced AFDC with Temporary Assistance to Needy Families (TANF) block grants to states. The TANF statute does not permit waivers of federal requirements, but waivers granted under the AFDC program were grandfathered in. Thus, the Department was permitted to operate the TANF program under its FAIM waiver until that waiver expired on December 31, 2003.

The loss of the FAIM waiver requires changes in allowable employment and training activities, as discussed below in connection with the amendment of ARM 37.78.807, which lists allowable employment and training activities for TANF participants. The amendment of ARM 37.78.103 is necessary to amend terms relating to employment and training activities such as "educational activities" and "job skills training" so that their definitions will be consistent with the provisions of ARM 37.78.807 as amended.

Several new definitions are being added to give the meaning of terms relating to employment and training activities which are listed for the first time in ARM 37.78.807 as amended, such as "community services", "job search" and "vocational education". A definition is also being added for "Tribal Native Employment Works (NEW)", a new TANF training and employment program which replaced the old AFDC Tribal Job Opportunities and Basic Skills Training (JOBS) program. The term "WoRC employability plan" is being defined because the term is used in ARM 37.78.216 and 37.78.806 as amended.

The definition of "post secondary education" is being deleted because post secondary education is no longer an allowable activity and ARM 37.78.825 providing criteria for post secondary education participation is being repealed. Thus the term no longer appears in the rules and does not need to be defined.

It is necessary to amend the definition of "family investment agreement (FIA)" at this time because the FIA, a written document which formerly outlined TANF program requirements and employment and training activities, no longer contains program requirements and employment and training activities. The only information the FIA now contains is the designation of which case management entity will be assisting the participant with employment and training activities, the WoRC program or Tribal NEW. Finally, the definition of the Work Experience Program (WEX)is being amended to include assessment and preparation as well as actual training at an agency or nonprofit organization.

ARM 37.78.106 establishes the policy for safeguarding confidential TANF information. ARM 37.78.106 is being amended to allow disclosure of confidential information to an appropriate authority, such as a law enforcement officer, when a TANF applicant or participant threatens to harm himself/herself or others. This change is necessary because under the current rule eligibility and WoRC, case managers who obtain knowledge of a threat in the course of case management cannot take steps to prevent harm to a participant or a third party. The Department has determined that the need to protect participants and third parties from harm outweighs the need to maintain confidentiality.

The proposed amendments to ARM 37.78.206, 37.78.216, 37.78.506(8) and 37.78.806 are necessary to make engagement with the WoRC program a basic eligibility requirement for individuals who are referred to WoRC for case management. The changes to ARM 37.78.216, 37.78.506(8) and 37.78.806 are also necessary to clarify that either the WoRC program or Tribal NEW are the only case management providers for participants and to establish the parameters of the WoRC employability plan. With the loss of the FAIM waiver, the countable activities allowed by federal regulation are limited. In order to better serve participants, activity case management by the WoRC program is mandatory unless the individual is being served by the Tribal NEW program. The option was considered to continue activity case management at both the office of public assistance and WoRC. However, this was rejected because of the increasing complexity of determining eligibility for TANF cash assistance, Medicaid and Food Stamps. Participants are better served by an entity that can focus completely on providing activity case management services. Making engagement with the WoRC program a basic eligibility requirement is necessary because of the increasing number of participants who are referred to the WoRC program for case management services who never engage with the WoRC program even after attempted outreach efforts.

Therefore, the amendment of ARM 37.78.206, which sets forth general eligibility requirements for the TANF program, is necessary to provide that entering into a WoRC employability plan is a requirement for TANF eligibility. Section (3) of ARM 37.78.206 lists persons who are not eligible for TANF cash

assistance. A new subsection, subsection (3)(l), is being added to specify that the entire assistance unit is ineligible for TANF benefits if a member of the assistance unit who is required to negotiate and sign a WoRC employability plan refuses without good cause to do so.

ARM 37.78.216 contains information about the Family Investment Agreement which is currently defined as an agreement between the TANF participant and the Department setting forth eligibility requirements and listing their respective obligations. The amendment of ARM 37.78.216(1) is necessary to redefine what a FIA is because the FIA will no longer list eligibility requirements and activities the participant must perform but will merely specify whether the participant is being referred to the WoRC program or to a tribal NEW program for case management. Subsection (1)(d) currently provides that the activities set forth in the FIA of a participant who is exempt from the 60-month time limit on receipt of TANF benefits due to incapacity or for some other reason shall take into consideration the limitations which were the basis for the time limit exemption. Subsection (1)(d) is no longer necessary, since the FIA will no longer set forth activities which a participant must perform. Subsection (1)(d) currently provides that failure to perform activities required in the FIA will result in a participant being sanctioned. Subsection (1)(d) is now being deleted since the FIA will not list required activities and a participant thus cannot be sanctioned for failing to perform activities listed in the FIA.

Additionally, new provisions about the WoRC employability plan are being added to ARM 37.78.216, because the employability plan will replace the FIA as the document which specifies what activities the participant must participate in and the mutual obligations of the participant and the WoRC program. Section (3) will set forth what the employability plan must contain. Subsection (3)(a) will provide that all participants referred to WoRc must negotiate an employability plan as a condition of eligibility for TANF, and subsection (3)(d) will provide that failure to perform activities required in the employability plan will result in result in sanctions.

The proposed amendment of ARM 37.78.506 is necessary to change the sanction policy. Currently ARM 37.78.506 provides that when a sanction is imposed for failure to comply with an employment related or training activity, the TANF assistance payment will be reduced for one month by an amount equal to one person's share of the monthly payment. This policy remains unchanged for the first sanction incurred by a participant. However, the rule is now being amended to provide for more severe penalties for the second and any subsequent sanctions. A second or subsequent sanction will result in the imposition of a one month ineligibility period. Thus, the sanctioned individual's household will receive no assistance payment for one month rather than receiving a reduced payment.

Changing the sanction policy is necessary to reduce the number of individuals who cycle on and off sanction. In December of 2002, only 12% of the individuals who were sanctioned had been sanctioned in the prior six months. In January 2004, 58% of individuals who were sanctioned had been sanctioned in the prior six months. The increase in the number of individuals who cycle on and off sanction is alarming and it is hoped that making the sanction penalty tougher will decrease the number of individuals who cycle on and off sanction. Also, this sanction policy more closely resembles the work model. Employers typically follow a three step discipline policy. The first step is a verbal warning, the second step is a written warning, and the third step is employment termination. When a person is out of compliance with scheduled TANF activities, the first step is the negotiation of a conciliation agreement. This is like a verbal warning. The first sanction would be like a written warning. The second and subsequent sanctions would be like employment termination.

Various other options to the sanction policy were considered and rejected. The first option considered was to require participants to participate in employment and training activities during the sanction penalty month. If he or she did not participate then a sanction month would be imposed. This option was rejected due to the complexity of administering the policy and the requirement to provide 10-day notice of case closure. The second option considered was to impose a one month ineligibility period for the second or third sanction and either a three month ineligibility period or a permanent ineligibility period for the fourth and subsequent sanctions. This option was rejected because the harshness of the penalty on the children. The third option considered was to institute a pay after performance system for TANF. This option was rejected due to the complexity of administering the policy. The fourth option considered was to keep the sanction policy the same for the first three sanctions but to impose a permanent ineligibility for the fourth sanction. Again this option was rejected because it was too harsh a penalty and does not allow people to change and learn from mistakes.

ARM 37.78.806(1) currently provides that all adults, teen parents and minor children aged 16 or 17 who are not attending school must participate in employment and training or other activities as indicated in the FIA. As previously explained, the FIA no longer lists what activities a TANF participant must perform to maintain eligibility. Therefore, it is necessary to delete the reference to activities indicated in the FIA and to provide instead that all adults, teen parents and minor children aged 16 or 17 who are not attending school must participate in employment and training activities as indicated in the WoRC employability plan.

Section (2) of ARM 37.78.806 currently provides that certain

participants may be required to participate in WoRC, and section (3) lists the factors which are considered in determining a participant's placement in training and employment activities. These provisions must be deleted because participation in WoRC and training and employment activities is mandatory for all adults, teen parents and minor children aged 16 or 17 who are not attending school.

ARM 37.78.807 lists allowable employment and training activities for TANF participants. Extensive changes to this rule are now necessary in order to comply with federal work participation requirements as set forth in 45 CFR 261.31, 261.32, 261.33, and 261.36. Under Montana's FAIM waiver, the Department did not have to comply with federal work participation requirements. However, since the FAIM waiver expired at the end of 2003, the Department must now amend its rule governing allowable training and employment activities so that the Department can meet federal work participation requirements. The rule is also being reorganized so that its format is similar to that of 45 CFR 261.31.

In ARM 37.78.807, post secondary education is being deleted from the list of allowable activities because this is not an allowable activity under federal regulations. Job readiness training is also being deleted and replaced with paid employment or self employment because job readiness training is not an allowable activity under federal regulation. A provision is being added that hours counted for self employment beyond the first two months are calculated based on gross income divided by minimum wage. This is necessary to allow start-up time for new self employment enterprises and to set parameters for ongoing self employment enterprises.

Job development and placement is being deleted as a separate activity because it is included in job search. On-the-job training is being deleted as an activity as Montana does not have an on-the-job training program at this time. If a program is developed at a later date rules will be adopted to implement such a program at that time. The limitation of training under work experience is being removed because work experience involves work experience assessment, preparation, and placement as well as actual time spent in training at a nonprofit organization or public or private agency.

Several new activities are being listed because they are activities allowed by federal regulation, namely, job search with limits as defined in the federal rule, community service, and vocational educational training with limits as prescribed by federal regulation. "Appropriate volunteer activities" is being replaced with "job skills training directly related to employment" because job skills training directly related to employment is allowed under federal regulation and volunteer activities are covered under community service. Job skills training directly related to employment is being limited to the

hours that are considered countable for federal participation. Short-term skills training is being replaced with educational activities because short-term skills training is covered under vocational educational training or job skills training directly related to employment and educational activities are allowed under federal regulation. Educational activities are being limited to individuals who do not have a high school diploma or GED and the number of hours are being limited to the hours which are countable for federal participation.

The option was considered to not make any changes to allowed activities. This idea was rejected because Montana must meet a participation requirement of 50% for all families and 90% for two parent families or face a penalty. Without the waiver, it is projected that Montana will not meet that participation requirement in Federal Fiscal Year 2004 and beyond without coming into compliance with federal rules.

ARM 37.78.810 governs the Work Experience Program (WEX), a program which allows TANF participants to gain work experience by training at nonprofit organizations, public agencies, or for profit private agencies. No substantive change is being made to this rule. WEX is now referred to as a work experience placement because work experience now also covers assessment and preparation as well as actual experience at an agency or nonprofit organization. Thus the word "placement" is being inserted throughout the rule.

ARM 37.78.826 provides that satisfactory progress in educational activities and post secondary education is defined in terms of the requirements of the institution the participant is attending. It is now necessary to amend the rule by deleting the reference to satisfactory progress in post secondary education because post secondary education is not an allowable activity under the federal regulations.

The repeal of several rules is also necessary at this time. ARM 37.78.817, which sets forth the employment and training participation requirements for two-parent households, is being repealed because the information in this rule is adequately covered under ARM 37.78.216, 37.78.806 and 37.78.807, making this rule redundant. ARM 37.78.825 pertaining to criteria for participation in post secondary training or education is being repealed because post secondary education is not an allowable activity under ARM 37.78.807 as amended. ARM 37.78.830 pertaining to job search is also being repealed because the information in this rule is adequately covered in ARM 37.78.807.

There are approximately 5,300 cases (approximately 14,000 individuals) presently receiving TANF cash assistance, all of which are impacted by the Department's administrative policies. The proposed changes to the TANF manual section 201-2 is not expected to increase, decrease, or change the nature of any fees, costs, or benefits. The change to refer all participants

to either Tribal NEW or WoRC for activities case management and to change the allowable activities is not expected to increase, decrease, or change the nature of any fees, costs, or benefits for the participant. The change in sanction policy is expected to decrease the benefits by approximately $616,611 per year if the cycler frequency continues. If compliance behavior is changed by the sanction policy change, as hoped, the decrease in benefit costs would be less.

5. The Department proposes these rule changes will be effective July 1, 2004.

6. Interested 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 20, 2004. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State April 12, 2004.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rule I through VI and the amendment of ARM 37.40.302, 37.40.311, 37.40.320, 37.40.321, 37.40.330, 37.40.346, 37.40.401, 37.40.402 and 37.40.405 pertaining to nursing facilities and swing-bed hospitals	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On May 12, 2004, at 2:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 3, 2004, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

RULE I RESIDENT RIGHTS (1) The swing-bed hospital must be in substantial compliance with the requirements set forth in this rule pertaining to resident rights.

(2) A provider must protect and promote the rights of each resident, including each of the following rights:

(a) The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the provider's facility.

(b) The resident has the right to be fully informed of the resident's total health status, including but not limited to medical condition, in language that the resident can understand.

(c) The resident has the right to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive as specified in 42 CFR 483.10(b)(8). The department adopts and incorporates by reference 42 CFR 483.10(b)(8). A copy of 42 CFR 483.10(b)(8) may be obtained from the Department of Public Health and Human Services, Senior

and Long Term Care Division, 111 N. Sanders, PO Box 4210, Helena, MT 59604-4210.

(3) Each resident who is entitled to medicaid benefits has a right to be informed by the provider in writing, at the time of admission to the swing-bed or, when the resident becomes eligible for medicaid of:

(a) the items and services that are included in the swing-bed per diem rate for which the resident may not be charged, i.e., those items included in nursing facility services under ARM 37.40.302(14) or ancillary services under ARM 37.40.330(1); and

(b) those other items and services that the provider offers and for which the resident may be charged, and the amount of charges for those services; and

(c) changes made to the items and services specified in (3)(a) and (b).

(4) The resident has the right to:

(a) choose a personal attending physician;

(b) be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well being; and

(c) unless adjudged incompetent or otherwise found to be incapacitated under state law, participate in planning care and treatment or changes in care and treatment.

(5) The resident has the right to personal privacy and confidentiality of personal and clinical records.

(a) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. The right of personal privacy does not require the provider to provide a private room for each resident.

(b) The resident may approve or refuse the release of personal and clinical records to any individual outside the facility, except when the resident is transferred to another health care institution or record release is required by law.

(6) The resident has the right to:

(a) refuse to perform services for the facility;

(b) perform services for the facility, if the resident chooses, when:

(i) the facility has documented in the plan of care the need or desire for work;

(ii) the plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) compensation for paid services is at or above prevailing rates; and

(iv) the resident agrees to the work arrangement described in the plan of care.

(7) The resident has the right to privacy in written communications, including the right to:

(a) send and promptly receive mail that is unopened; and

(b) have access to stationery, postage, and writing implements at the resident's own expense.

(8) The resident has the right to see, and the facility must provide immediate access to any resident by, the following:

(a) subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(b) subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(9) The resident has the right to retain and use personal possessions, including some furnishings and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(10) The resident has the right to share a room with a spouse when married residents live in the same facility and both spouses consent to the arrangement.

(11) The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(12) The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

(13) The resident has the right to be informed in writing of the policies and procedures developed by the facility pursuant to [RULE IV].

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-113, MCA

RULE II RESIDENT TRANSFER AND DISCHARGE RIGHTS (1) The resident has the following transfer and discharge rights. Transfer and discharge includes movement of a resident to a bed outside of the swing-bed hospital facility whether or not that bed is in the same physical plant. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

(2) The facility must permit each resident to remain in the facility and may not transfer or discharge the resident from the facility unless any one or more of the following apply:

(a) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(c) the safety of individuals in the facility is endangered;

(d) the health of individuals in the facility would otherwise be endangered;

(e) the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under medicare or medicaid) a stay at the facility. For a resident who becomes eligible for medicaid after admission to a facility, the facility may charge a resident only allowable charges under medicaid;

(f) the facility ceases to operate; or

(g) an appropriate nursing facility bed is available within a 25 mile radius of the swing-bed hospital, as provided in ARM 37.40.405.

(3) When the facility transfers or discharges a resident, the facility must document the reason for transfer or discharge in the resident's clinical record. The documentation must be made by the resident's physician when transfer or discharge is necessary under (2)(a) and (b), or a physician when transfer or discharge is necessary under (2)(d).

(4) Before a facility transfers or discharges a resident, the facility must:

(a) notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(b) record the reasons in the resident's clinical record; and

(c) include in the notice the items described in (6) through (6)(f).

(5) Notice of transfer or discharge must be made by the facility at least 30 days before the resident is transferred or discharged except when:

(a) the safety of individuals in the facility would be endangered;

(b) the health of the individuals in the facility would be endangered;

(c) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(d) an immediate transfer or discharge is required by the resident's urgent medical needs;

(e) a resident has not resided in the facility for 30 days; or

(f) transfer is required within 72 hours because an appropriate nursing facility bed is available within a 25 mile radius of the swing-bed hospital. In such cases, the facility must provide notice within 24 hours of determining that the nursing facility bed is available.

(6) The written notice of transfer or discharge must include the following:

(a) the reason for transfer or discharge;

(b) the effective date of transfer or discharge;

(c) the location to which the resident is transferred or discharged;

(d) a statement that the resident has the right to appeal the action to the fair hearings office at the department of public health and human services;

(e) the name, address and telephone number of the long term care ombudsman in the governor's office on aging; and

(f) for nursing facility residents with developmental disabilities and nursing facility residents who are mentally ill, the mailing address and telephone number of the Montana advocacy program, inc.

(7) A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or

discharge from the facility.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-113, MCA

RULE III RESIDENT POST DISCHARGE RIGHTS (1) When the facility anticipates discharge, a resident must have a discharge summary that includes:

(a) a recapitulation of the resident's stay;

(b) a final summary of the resident's status which includes:

(i) medically defined conditions and prior medical history;

(ii) medical status measurement;

(iii) physical and mental functional status;

(iv) sensory and physical impairments;

(v) nutritional status and requirements;

(vi) special treatments or procedures;

(vii) mental and psychosocial status;

(viii) discharge potential;

(ix) dental condition;

(x) activities potential;

(xi) cognitive status;

(xii) drug therapy; and

(c) a post discharge plan of care that is developed with the participation of the resident and family, which will assist the resident to adjust to the new living environment.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-113, MCA

RULE IV FACILITY POLICY REQUIREMENTS (1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(2) The policies must provide that the facility will:

(a) not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;

(b) not employ individuals who have been found guilty of abusing, neglecting, or mistreating residents by a court of law, or have had a finding entered into the nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property;

(c) report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the nurse aide registry maintained by the department of public health and human services;

(d) ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility, the long term care ombudsman, and the department of public health and human services in accordance with 52-3-811, MCA;

(e) have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress;

(f) ensure that the results of all investigations must be reported to the administrator of the facility and to the department of public health and human services in accordance with 52-3-811, MCA, within five working days of the incident; and

(g) if the alleged violation is verified, take appropriate corrective action.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-113, MCA

RULE V SPECIALIZED REHABILITATIVE SERVICES (1) If specialized rehabilitative services such as but not limited to physical therapy, speech-language pathology, occupational therapy, and mental health rehabilitative services for mental illness and mental retardation are required in the resident's comprehensive plan of care, the facility must provide the required services, or obtain the required services from an outside resource from a provider of specialized rehabilitative services.

(a) Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

(2) The facility must assist residents in obtaining routine and 24-hour emergency dental care.

(a) The facility must, if necessary, assist the resident in making appointments, and by arranging for transportation to and from the dentist's office.

(b) The facility must promptly refer residents with lost or damaged dentures to a dentist.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-113, MCA

RULE VI RESIDENT ACTIVITIES PROGRAM (1) The facility must provide for an ongoing program of activities designed to meet the interests and the physical, mental, and psychosocial well being of each resident.

(2) The activities program must be directed by a qualified professional who:

(a) is a qualified therapeutic recreation specialist or an activities professional who is licensed or registered and is eligible for certification as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body on or after October 1, 1990;

(b) has two years of experience in a social or recreational program within the last five years, one of which was full-time in a patient activities program in a health care setting;

(c) is a qualified occupational therapist or occupational therapy assistant; or

(d) has completed a training course approved by the state.

(3) The facility must provide medically related social services to attain or maintain the highest practicable physical, mental, and psychosocial well being of each resident.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-113, MCA

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.40.302 DEFINITIONS Unless the context requires otherwise in this subchapter, the following definitions apply:

(1) through (11) remain the same.

(12) "Nursing facility fee schedule" means the list of separately billable ancillary services provided in ARM 37.40.330.

(12) through (12)(g) remain the same but are renumbered (13) through (13)(g).

(h) nonemergency routine transportation as defined in ~~(14)~~ (11).

(13) through (19) remain the same but are renumbered (14) through (20).

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.40.311 RATE ADJUSTMENT FOR COUNTY FUNDED RURAL NURSING FACILITIES (1) For state fiscal year ~~2004~~ 2005 and each year thereafter, the department will provide a mechanism for a one time, lump sum payment to non-state governmental owned or operated facilities for medicaid services. These payments will be for the purpose of maintaining access and viability for a class of "at risk" county affiliated facilities who are predominately rural and are the only nursing facility in their community or county or who provide a significant share of nursing facility services in their community or county.

(a) remains the same.

(b) The department will calculate the amount of lump sum distribution that will be allowed for each county affiliated provider so that the total per day amount does not exceed the computed medicare upper payment limit for these providers. Distribution of these lump sum payments will be based on the medicaid utilization at each participating facility for the period July 1, ~~2003~~ 2004 through June 30, ~~2004~~ 2005 and each year thereafter.

(c) In order to qualify for this lump sum adjustment effective July 1, ~~2003~~ 2004 and each year thereafter, each non-state governmental owned or operated facility must enter into a written agreement to transfer local county funds to be used as matching funds by the department. This transfer option is voluntary, but those facilities that agree to participate must abide by the terms of the written agreement.

(2) Effective for the period commencing on or after July

1, ~~2003~~ 2004 and each year thereafter, the department will provide for a one time, lump sum distribution of funding to nursing facilities not participating in the funding for "at risk" facilities for the provision of medicaid services.

(a) The department will calculate the maximum amount of the lump sum payments that will be allowed for each participating non-state governmental owned or operated facility, as well as the additional payments for other nursing facilities not participating in the funding for "at risk" facilities for the provision of medicaid services~~, based on the availability of funding and~~ in accordance with state and federal laws, as well as applicable medicare upper payment limit thresholds. This payment will be computed as a per day add-on based upon the funding available. Distribution will be in the form of lump sum payments and will be based on the medicaid utilization at each participating facility for the period July 1, ~~2003~~ 2004 through June 30, ~~2004~~ 2005 and each year thereafter.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113, MCA

37.40.320 MINIMUM DATA SET SUBMISSION, TREATMENT OF DELAYS IN SUBMISSION, INCOMPLETE ASSESSMENTS, AND CASE MIX INDEX CALCULATION (1) Nursing facilities shall submit all minimum data set assessments and tracking documents to the ~~health care financing administration (HCFA)~~ centers for medicare and medicaid services (CMS) database as required by federal participation requirements, laws and regulations.

(2) through (6) remain the same.

(7) For purposes of calculating rates, case mix weights will be developed for each of the 34 RUG-III groupings. The department will compute a Montana specific medicaid case mix utilizing average nursing times from the 1995 and the 1997 ~~HCFA~~ CMS case mix time study. The average minutes per day per resident will be adjusted by Montana specific salary ratios determined by utilizing the licensed to non-licensed ratio spreadsheet information.

(8) and (9) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.40.321 CORRECTION OF ERRONEOUS OR MISSING DATA

(1) remains the same.

(2) If data reported on the resident listings is in error or if there is missing data, facilities will have until the 15th day of the first month of each calendar quarter to correct data submissions.

(a) Errors or missing data on the resident listings due to untimely submissions to the ~~HCFA~~ CMS database maintained by the department of public health and human services (DPHHS) are corrected by transmitting the appropriate assessments or tracking documents to DPHHS in accordance with ~~HCFA~~ CMS requirements.

(b) Errors in key field items are corrected following the ~~HCFA~~ CMS key field specifications through DPHHS.

(c) and (3) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.40.330 SEPARATELY BILLABLE ITEMS (1) In addition to the amount payable under the provisions of ARM 37.40.307(1) or ~~(5)~~ (4), the department will reimburse nursing facilities located in the state of Montana for the following separately billable items. Refer to the department's nursing facility fee schedule for specific codes and refer to healthcare common procedure coding system (HCPCS) coding manuals for complete descriptions of codes:

~~(a) colostomy set;~~
~~(b) ostomy face plate;~~
~~(c) ostomy skin barrier;~~
~~(d) ostomy liquid barrier;~~
~~(e) ostomy skin bond or cement;~~
~~(f) ostomy bag, disposable/closed;~~
~~(g) ostomy bag, reusable or drainable;~~
~~(h) ostomy belt;~~
~~(i) stoma wicks;~~
~~(j) tail closures;~~
~~(k) ostomy skin bond or cement, remover;~~
~~(l) ileostomy set;~~
~~(m) ileal bladder set;~~
~~(n) irrigation set for irrigation of ostomy;~~
~~(o) ostomy lubricant;~~
~~(p) ostomy rings;~~
~~(q) ostomy supplies not otherwise listed;~~
~~(r) ureterostomy set;~~
~~(s) ureterostomy supplies not otherwise listed;~~
~~(t) colon tube;~~
~~(u) disposable colostomy appliances and accessories;~~
~~(v) colostomy irrigation appliance;~~
~~(w) colostomy irrigation accessory;~~
~~(x) colostomy appliance, non-disposable;~~
~~(y) colostomy appliance;~~
~~(z) disposable ileostomy accessory;~~
~~(aa) disposable urostomy bags;~~
~~(ab) piston irrigation set;~~
~~(ac) blood or urine control strips or tablets;~~
~~(ad) dextrostick or glucose test strips;~~
~~(ae) implantable vascular access portal/catheter (venous arterial or peritoneal);~~
~~(af) indwelling catheter, foley type, two-way, teflon;~~
~~(ag) indwelling catheter, foley type, two-way, latex;~~
~~(ah) indwelling catheter, foley type, two-way, latex with teflon coating;~~
~~(ai) indwelling catheter, foley type, two-way, all silicone;~~
~~(aj) indwelling catheter, foley type, two-way, silicone~~

~~with elastomer coating;~~

~~(ak) indwelling catheter, foley type, three-way, latex or teflon for continuous irrigation;~~

~~(al) external catheter, condom type;~~

~~(am) urinary collection and retention system, drainage bag with tube;~~

~~(an) urinary collection and retention system, leg bag with tube;~~

~~(ao) catheter care kit;~~

~~(ap) catheter insertion tray, without tube and drainage bag;~~

~~(aq) three-way irrigation set for catheter;~~

~~(ar) uretheral catheter;~~

~~(as) catheter miscellaneous supplies;~~

~~(at) uretheral catheter with tray;~~

~~(au) caudi-tip catheter;~~

~~(av) male mentor catheter;~~

~~(aw) incontinence clamp;~~

~~(ax) urinary drainage bag;~~

~~(ay) urinary leg bag;~~

~~(az) bedside drainage bag;~~

~~(ba) tracheostomy care kit;~~

~~(bb) nasopharyngeal/tracheal suction kit;~~

~~(bc) oxygen contents, gaseous, per cubic feet;~~

~~(bd) oxygen contents, gaseous, per 100 cubic feet;~~

~~(be) oxygen contents, liquid, per pound;~~

~~(bf) oxygen contents, liquid, per 100 pounds;~~

~~(bg) cannula;~~

~~(bh) tubing, unspecified length, per foot;~~

~~(bi) regulator;~~

~~(bj) mouth piece;~~

~~(bk) stand/rack;~~

~~(bl) face tent;~~

~~(bm) IPPB kit;~~

~~(bn) portable aspirator;~~

~~(bo) connectors;~~

~~(bp) face mask;~~

~~(bq) nasal catheter;~~

~~(br) disposable IPPB tubing;~~

~~(bs) disposable humidifier(s);~~

~~(bt) extension hoses;~~

~~(bu) MADA plastic nebulizer with mask and tube;~~

~~(bv) nasal O2 kit;~~

~~(bw) O2 contents, linde reservoir;~~

~~(bx) O2 contents, liberator;~~

~~(by) O2 contents, LV 160;~~

~~(bz) O2 contents, PCU reservoir;~~

~~(ca) O2 contents, GP-45;~~

~~(cb) O2 contents, D cylinder;~~

~~(cc) O2 contents, E cylinder;~~

~~(cd) O2 cylinder contents, GDL-K;~~

~~(ce) cylinder rental, one month;~~

~~(cf) piped in oxygen;~~

~~(cg) oxygen cart for portable tank (purchase);~~

~~(ch) enteral feeding supply kit; syringe (monthly);~~
~~(ci) enteral feeding supply kit; pump fed (monthly);~~
~~(cj) enteral feeding supply kit; gravity fed (monthly);~~
~~(ck) nasal gastric tubing with thin wire or cotton (e.g., travasorb, entriflex, dobb huff, flexiflow, etc.);~~
~~(cl) nasogastric tubing without stylet;~~
~~(cm) stomach tube - levine type;~~
~~(cn) enteral supply kit for prepackaged delivery system (monthly);~~
~~(co) nasogastric tubing with or without stylet (e.g., travasorb);~~
~~(cp) enteric feeding set;~~
~~(cq) flex-flo feeding set;~~
~~(cr) nutrition container;~~
~~(cs) IV intercath;~~
~~(ct) IV tubing;~~
~~(cu) IV piggyback tubing;~~
~~(cv) parenteral nutrition supply kit for one month - premix;~~
~~(cw) parenteral nutrition supply kit for one month - homemix;~~
~~(cx) parenteral nutrition administration kit for one month;~~
~~(cy) enteral supplies not elsewhere classified;~~
~~(cz) parenteral supplies not elsewhere classified;~~
~~(da) feeding syringe;~~
~~(db) gavage feeding set;~~
(a) ostomy surgical tray;
(b) ostomy face plate;
(c) ostomy skin barriers;
(d) ostomy filter;
(e) ostomy bags (pouches);
(f) ostomy belt;
(g) adhesive;
(h) adhesive remover;
(i) ostomy irrigation set and supplies;
(j) ostomy lubricant;
(k) ostomy rings;
(l) ostomy irrigation supply, cone/catheter, including brush;
(m) catheter care kit;
(n) urine test or reagent strips or tablets;
(o) blood tubing, arterial or venous;
(p) blood glucose test strips for dialysis;
(q) blood glucose test or reagent strips for home blood glucose monitor;
(r) implantable access catheter (venous, arterial, epidural, subarachnoid, peritoneal, etc.) external access;
(s) gastrostomy/jejunostomy tube, any material, any type;
(t) oropharyngeal suction catheter;
(u) implanted pleural catheter;
(v) external urethral clamp or compression device;
(w) urinary catheters;
(x) urinary insertion trays (sets);

(y) urinary collection bags;
(z) tracheostomy care kit for established tracheostomy;
(aa) tracheostomy, inner cannula (replacement only);
(ab) oxygen contents, portable, liquid;
(ac) oxygen contents, portable, gas;
(ad) oxygen contents, stationary, liquid;
(ae) oxygen contents, stationary, gas;
(af) cannula, nasal;
(ag) oxygen tubing;
(ah) regulator;
(ai) mouth piece;
(aj) stand/rack;
(ak) face tent;
(al) humidifier;
(am) breathing circuits;
(an) respiratory suction pump, home model, portable or stationary;
(ao) nebulizer, with compressor;
(ap) feeding syringe;
(aq) nasal interface (mask or cannula type) used with positive airway device;
(ar) stomach tube - levine type;
(as) nasogastric tubing (with or without stylet);
(at) nutrition administration kits;
(au) feeding supply kits;

(1)(dc) through (1)(de)(iii) remain the same but are renumbered (1)(av) through (1)(ax)(iii).

(2) The department may, in its discretion, pay as a separately billable item, a per diem nursing services increment for services provided to a ventilator dependent resident if the department determines that extraordinary staffing by the facility is medically necessary based upon the resident's needs.

(a) Payment of a per diem nursing services increment under (2) for services provided to a ventilator dependent resident shall be available only if, prior to the provision of services, the increment has been authorized in writing by the department's ~~medicaid services~~ senior and long term care division. Approvals will be effective for ~~1~~ one month intervals and reproval must be obtained monthly.

(b) through (10) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.40.346 COST REPORTING, DESK REVIEW AND AUDIT

(1) through (3) remain the same.

(4) All providers must report allowable costs based upon the provider's fiscal year and using the financial and statistical report forms designated and/or provided by the department. Reports must be complete and accurate. Incomplete reports or reports containing inconsistent data will be returned to the provider for correction.

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

(b) The report forms required by the department include

certain medicare cost report forms and related instructions, including but not limited to certain portions of the most recent version of the ~~HCFA-2540~~ CMS-2540 or ~~HCFA-2552~~ CMS-2552 cost report forms, as more specifically identified in the department's cost report instructions. The department also requires providers to complete and submit certain medicaid forms, including but not limited to the most recent version of the medicaid expense statement, form DPHHS-MA-008A.

(i) In preparing worksheet A on the ~~HCFA-2540~~ CMS-2540 or ~~HCFA-2552~~ CMS-2552 cost report form, providers must report costs in the worksheet A category that correspond~~s~~ to the category in which the cost is reportable on the medicaid expense statement, as designated in the department's cost report instructions.

(b)(ii) through (7) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.40.401 SWING-BED HOSPITALS, DEFINITIONS (1) A swing-bed hospital is a licensed hospital, critical access hospital (CAH) or licensed medical assistance facility which is medicare-certified to provide posthospital SNF care as defined in 42 CFR 409.20.

(2) remains the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.40.402 SWING-BED HOSPITALS, PROVIDER PARTICIPATION REQUIREMENTS (1) To participate and be reimbursed as a swing-bed hospital service provider in the Montana medicaid program, a hospital must meet all of the following requirements:

(a) through (b)(i)(D) remain the same.

(c) The hospital is located in a rural area of the state. A rural area is an area which is not designated as "urbanized" by the most recent official census. A copy of the bureau of the census listing of urbanized areas is available upon request from the Department of Public Health and Human Services, ~~Health Policy and Services Division, 1400 Broadway, P.O. Box 202951~~ Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT ~~59620-2951~~ 59604-4210.

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

(ii) The department may terminate a provider's swing-bed hospital services provider enrollment if it determines that the hospital is not in compliance with any of the requirements of this ~~section~~ rule.

~~(2) The swing-bed hospital must be in substantial compliance with the following requirements:~~

~~(a) A provider must protect and promote the rights of each resident, including each of the following rights:~~

~~(i) The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the provider's facility.~~

~~(ii) The resident has the right to be fully informed of the resident's total health status, including but not limited to medical condition, in language that the resident can understand.~~

~~(iii) The resident has the right to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive as specified in 42 CFR 483.10(b)(8). The department hereby adopts and incorporates by reference 42 CFR 483.10(b)(8). A copy of 42 CFR 483.10(b)(8) may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(iv) The provider must:~~

~~(A) Inform each resident who is entitled to medicaid benefits, in writing, at the time of admission to the swing-bed or, when the resident becomes eligible for medicaid of:~~

~~(I) The items and services that are included in the swing-bed per diem rate for which the resident may not be charged, i.e., those items included in nursing facility services under ARM 37.40.302(14) or ancillary services under ARM 37.40.330(1); and~~

~~(II) Those other items and services that the provider offers and for which the resident may be charged, and the amount of charges for those services; and~~

~~(B) Changes made to the items and services specified in (2)(a)(iv)(A)(I) and (2)(a)(iv)(A)(II).~~

~~(v) The resident has the right to:~~

~~(A) Choose a personal attending physician;~~

~~(B) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and~~

~~(C) Unless adjudged incompetent or otherwise found to be incapacitated under state law, participate in planning care and treatment or changes in care and treatment.~~

~~(vi) The resident has the right to personal privacy and confidentiality of personal and clinical records.~~

~~(A) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. The right of personal privacy does not require the provider to provide a private room for each resident;~~

~~(B) The resident may approve or refuse the release of personal and clinical records to any individual outside the facility, except when the resident is transferred to another health care institution or record release is required by law.~~

~~(vii) The resident has the right to:~~

~~(A) Refuse to perform services for the facility;~~

~~(B) Perform services for the facility, if the resident chooses, when:~~

~~(I) The facility has documented in the plan of care the need or desire for work;~~

~~(II) The plan specifies the nature of the services performed and whether the services are voluntary or paid;~~

~~(III) Compensation for paid services is at or above prevailing rates; and~~

~~(IV) The resident agrees to the work arrangement described in the plan of care.~~

~~(viii) The resident has the right to privacy in written communications, including the right to:~~

~~(A) Send and promptly receive mail that is unopened; and~~

~~(B) Have access to stationery, postage, and writing implements at the resident's own expense.~~

~~(ix) The resident has the right and the facility must provide immediate access to any resident by the following:~~

~~(A) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and~~

~~(B) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.~~

~~(x) The resident has the right to retain and use personal possessions, including some furnishings and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.~~

~~(xi) The resident has the right to share a room with a spouse when married residents live in the same facility and both spouses consent to the arrangement.~~

~~(xii) The resident has the following transfer and discharge rights. Transfer and discharge includes movement of a resident to a bed outside of the swing-bed hospital facility whether or not that bed is in the same physical plant. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.~~

~~(A) The facility must permit each resident to remain in the facility and may not transfer or discharge the resident from the facility unless any one or more of the following apply:~~

~~(I) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;~~

~~(II) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;~~

~~(III) The safety of individuals in the facility is endangered;~~

~~(IV) The health of individuals in the facility would otherwise be endangered;~~

~~(V) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under medicare or medicaid) a stay at the facility. For a resident who becomes eligible for medicaid after admission to a facility, the facility may charge a resident only allowable charges under medicaid;~~

~~(VI) The facility ceases to operate; or~~

~~(VII) An appropriate nursing facility bed is available within a 25 mile radius of the swing-bed hospital, as provided in ARM 37.40.405.~~

~~(B) When the facility transfers or discharges a resident, the facility must document the reason for transfer or discharge in the resident's clinical record. The documentation must be~~

~~made by the resident's physician when transfer or discharge is necessary under (xii)(A)(I) or (xii)(A)(II) of this section, or a physician when transfer or discharge is necessary under (xii)(A)(IV) of this section.~~

~~(C) Before a facility transfers or discharges a resident, the facility must:~~

~~(I) notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;~~

~~(II) record the reasons in the resident's clinical record; and~~

~~(III) Include in the notice the items described in (E) of this section.~~

~~(D) Notice of transfer or discharge must be made by the facility at least 30 days before the resident is transferred or discharged except when:~~

~~(I) The safety of individuals in the facility would be endangered;~~

~~(II) The health of the individuals in the facility would be endangered;~~

~~(III) The resident's health improves sufficiently to allow a more immediate transfer or discharge;~~

~~(IV) An immediate transfer or discharge is required by the resident's urgent medical needs;~~

~~(V) A resident has not resided in the facility for 30 days; or~~

~~(VI) Transfer is required within 72 hours because an appropriate nursing facility bed is available within a 25 mile radius of the swing-bed hospital. In such cases, the facility must provide notice within 24 hours of determining that the nursing facility bed is available.~~

~~(E) The written notice must include the following:~~

~~(I) The reason for transfer or discharge;~~

~~(II) The effective date of transfer or discharge;~~

~~(III) The location to which the resident is transferred or discharged;~~

~~(IV) A statement that the resident has the right to appeal the action to the fair hearings office at the department of public health and human services.~~

~~(V) The name, address and telephone number of the long-term care ombudsman in the governor's office on aging; and~~

~~(VI) For nursing facility residents with developmental disabilities and nursing facility residents who are mentally ill, the mailing address and telephone number of the Montana Advocacy Program, Inc.~~

~~(F) A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.~~

~~(xiii) The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.~~

~~(xiv) The resident has the right to be free from verbal,~~

~~sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.~~

~~(xv) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property. The facility must:~~

~~(A) not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;~~

~~(B) not employ individuals who have been found guilty of abusing, neglecting, or mistreating residents by a court of law, or have had a finding entered into the nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property;~~

~~(C) report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the nurse aide registry maintained by the department of public health and human services;~~

~~(D) ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility, the long-term care ombudsman, and the department of public health and human services in accordance with 52-3-811, MCA;~~

~~(E) have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress; and~~

~~(F) ensure that the results of all investigations must be reported to the administrator of the facility and to the department of public health and human services in accordance with 52-3-811 MCA within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.~~

~~(b) The facility must provide for an ongoing program of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident.~~

~~(i) The activities program must be directed by a qualified professional who:~~

~~(A) is a qualified therapeutic recreation specialist or an activities professional who is licensed or registered and is eligible for certification as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body on or after October 1, 1990;~~

~~(B) has 2 years of experience in a social or recreational program within the last 5 years, 1 of which was full-time in a patient activities program in a health care setting;~~

~~(C) is a qualified occupational therapist or occupational therapy assistant; or~~

~~(D) has completed a training course approved by the state.~~

~~(c) The facility must provide medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.~~

~~(d) When the facility anticipates discharge a resident must have a discharge summary that includes:~~

~~(i) A recapitulation of the resident's stay;~~
~~(ii) A final summary of the resident's status to include:~~
~~(A) medically defined conditions and prior medical history;~~
~~(B) medical status measurement;~~
~~(C) physical and mental functional status;~~
~~(D) sensory and physical impairments;~~
~~(E) nutritional status and requirements;~~
~~(F) special treatments or procedures;~~
~~(G) mental and psychosocial status;~~
~~(H) discharge potential;~~
~~(I) dental condition;~~
~~(J) activities potential;~~
~~(K) cognitive status; and~~
~~(L) drug therapy.~~
~~(iii) A post-discharge plan of care that is developed with the participation of the resident and family, which will assist the resident to adjust to the new living environment.~~
~~(e) If specialized rehabilitative services such as but not limited to physical therapy, speech-language pathology, occupational therapy, and mental health rehabilitative services for mental illness and mental retardation, are required in the resident's comprehensive plan of care, the facility must provide the required services, or obtain the required services from an outside resource from a provider of specialized rehabilitative services.~~
~~(i) Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.~~
~~(f) The facility must assist residents in obtaining routine and 24-hour emergency dental care.~~
~~(i) The facility must, if necessary, assist the resident in making appointments, and by arranging for transportation to and from the dentist's office.~~
~~(ii) The facility must promptly refer residents with lost or damaged dentures to a dentist.~~

AUTH: Sec. 53-6-113 and 53-2-201, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113, and 53-6-141, MCA

37.40.405 SWING-BED HOSPITALS, SPECIAL SERVICE REQUIREMENTS (1) Before admitting a medicaid recipient to a swing-bed, the swing-bed hospital must meet all of the following requirements:

(a) the hospital must obtain a prescreening by a department ~~long-term~~ long term care specialist to determine the level of care required by the patient's medical condition. Medicaid will not reimburse a provider for swing-bed hospital services provided to a medicaid recipient admitted to a swing-bed unless the recipient meets the nursing facility level of care requirements specified in ARM 37.40.202 and 37.40.205. The swing-bed hospital must ensure that form ~~SRS-MA-61~~ DPHHS-SLTC-61, "screening notification~~,~~", is completed by the department prescreening team to document the level of care determination.

(b) remains the same.

(i) For purposes of this ~~section~~ rule, an "appropriate" nursing facility bed is a bed in a medicaid-participating nursing facility which provides the level of care required by the recipient's medical condition.

(2) remains the same.

(3) The requirements of (1)(b) and (2) apply regardless of the 30-day notice requirement generally applicable to transfers and discharges under ~~ARM 37.40.402(2)(a)(xii)~~ [RULE II(1)]. When an appropriate nursing facility bed is or becomes available, the provider must provide notice as required by ~~ARM 37.40.402(2)(a)(xii)(D)(VI)~~ [RULE II(5)(f)] and must otherwise comply with the requirements of ~~ARM 37.40.402(2)(a)(xii)~~ [RULE II(1)] to the extent practicable in the time available before transfer to the nursing facility bed.

(4) A provider may request a waiver of the determination requirement of (1)(b) for an acute care patient of the swing-bed hospital or may request for a swing-bed patient a waiver of the transfer requirement of (2) when the recipient's attending physician verifies in writing that either the recipient's condition would be endangered by transfer to an appropriate nursing facility bed within a 25 mile radius of the swing-bed hospital or that the individual has a medical prognosis that his or her life expectancy is ~~6~~ six months or less if the illness runs its normal course.

(a) The waiver request and physician's written verification must be submitted to the Department of Public Health and Human Services, ~~Health Policy and Services Division, 1400 Broadway, P.O. Box 202951~~ Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT ~~59620-2951~~ 59640-4210. Waiver approvals granted by county offices will not be valid or effective for purposes of this ~~section~~ rule.

(b) The waiver request and physician's written verification must be received by the ~~medicaid services~~ nursing facility services bureau within ~~5~~ five working days of admission to the swing-bed or within ~~5~~ five days of availability of an appropriate nursing facility bed and the provider must obtain written approval from the medicaid services bureau prior to billing for services provided after the date of admission to the swing-bed or the date of availability of an appropriate nursing facility bed.

(5) The department may retrospectively review the use of swing-bed services provided to medicaid patients and may deny payments when it is determined that the requirements of this ~~section~~ rule were not met.

AUTH: Sec. 53-6-113 and 53-2-201, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

4. The Department proposes to adopt Rules I through V and to make the proposed amendments to ARM 37.40.302, 37.40.311, 37.40.320, 37.40.321, 37.40.330, 37.40.346, 37.40.401, 37.40.402 and 37.40.405. These amendments are necessary to continue the

one-time rate adjustment for "at risk" county funded rural nursing facilities and other nursing facility one-time payments through state fiscal year 2005 and each year thereafter. If the rules were not amended to extend the rate adjustments for county funded rural nursing facilities, the Department would not be in compliance with budgetary requirements and would be in violation of law. Furthermore, the rate adjustments are necessary to meet Medicaid requirements for access to services. The Department is updating billing codes in these amendments to meet the requirements of the Health Insurance Portability and Accountability Act (HIPAA). The Department is taking this opportunity to update references to the Federal agency that regulates the Medicaid program. The proposed amendments reflect a reorganization of the Department that transferred responsibility for swing-bed hospitals to the Senior and Long Term Care Division. Finally, the Department is proposing to separate ARM 37.40.402 into several rules, each containing only one subject.

Price Based System:

The Department will provide rate sheets to all providers in advance of the rule hearing, for verification purposes and in order to facilitate comments, when final case mix information and Medicaid utilization data and other details necessary to compute accurate reimbursement rates are received. These rates will distribute the funding available in order to meet the Department's goals for a price-based system of reimbursement and will incorporate legislative appropriated funding levels.

ARM 37.40.302

Te Department proposes to add a definition of "Nursing Facility Fee Schedule" to this rule. The nursing facility fee schedule would be defined as the list of separately billable items under ARM 37.40.330. This change is necessary to implement a requirement of HIPAA. HIPAA requires that there be standardized procedure coding. Medicaid fiscal intermediaries and carriers must eliminate any unapproved local procedure and modifier codes in current use. ARM 37.40.330 would be changed accordingly.

ARM 37.40.311

The Department proposes that county funded rural nursing facilities receive additional reimbursement up to the Medicare upper limit. For rate year 2005 and each year thereafter, the Department proposes to continue the one time, lump-sum payment to "at risk" non-state government owned or operated nursing facilities providing Medicaid services.

These payments would maintain access for Medicaid recipients and viability for a class of "at risk" county affiliated facilities that are predominately rural in nature and are often the only nursing facilities in their community or county. In order to

qualify for this lump sum adjustment, each non-state government owned or operated facility must enter into a written agreement to transfer local county funds to be used as matching funds by the Department. This transfer option is voluntary, but those facilities that agree to participate must abide by the terms of the agreement. Distribution of these lump sum payments will be based on the Medicaid utilization at each participating facility.

Other Nursing Facility One Time Payments:

For the rate year commencing July 1, 2004, and each year thereafter, the Department proposes a one-time, lump sum distribution of funding to nursing facilities that have not been determined to be "at risk" for the provision of Medicaid services. These facilities are faced with declining census and the need for increased staffing in order to maintain viability and assure that quality nursing facility services are available to Medicaid eligible residents. Distribution of these lump sum payments will be based on the Medicaid utilization at each participating facility.

ARM 37.40.320 and 37.40.321

The Department is taking this opportunity to propose updated references in these rules to the Federal agency that regulates the Medicaid program. Formerly denominated the "Health Care Finance Administration" (HCFA), the agency is now the "Centers for Medicare and Medicaid Services" (CMS). References in the rules would be changed accordingly.

ARM 37.40.330

The Department proposes an updated listing of ancillary services and names to convert from local codes to HIPAA compliant codes with specific definitions.

ARM 37.40.346

The Department is taking this opportunity to propose updated references in these rules to standardized forms promulgated by the Federal agency that regulates the Medicare program. As discussed above, the name of that agency is now referred to as "CMS" and the references in this rule would be changed accordingly.

ARM 37.40.401

The Department is proposing to add critical access hospitals (CAH) to the definition of swing-bed hospitals so that it would parallel the Federal regulation at 42 CFR 409.20.

ARM 37.40.402 and Rules I through VI

The Department is taking this opportunity to update this rule to reflect a reorganization. The Medicaid swing bed hospital program is now administered by the Senior and Long Term Care Division. Addresses in the rule would be changed accordingly.

The Department is also proposing to break the rule into the original rule plus six additional new rules, each containing only one subject. This would make the rules easier for swing-bed residents, providers and the public to find and read. No substantive change is intended.

ARM 37.40.405

The Department is taking this opportunity to update this rule to reflect a reorganization. The Medicaid swing bed hospital program is now administered by the Senior and Long Term Care Division. Addresses in the rule would be changed accordingly. The Department is also taking this opportunity to correct minor typographical and style errors. No substantive change is intended.

Estimated financial and budget effects:

The legislature authorized rate increases in FY 2005 in the executive budget through increases in provider taxes. They provided funding from "at risk" payments that previously were directed to offset Medicaid costs in the Medicaid mental health program to the nursing facility program to offset a 1.87% provider rate reduction in fiscal year 2005. The total state and federal funding available for fiscal year 2005 is currently projected at $120,565,634, which includes $18,759,641 in additional state special revenue plus federal revenue that would be provided by the increase in the nursing facility provider tax to $5.30, an increase of $2.50 per day in FY 2005 from the 2003 level of $2.80 or an $0.80 increase from the 2004 level of $4.50 per day. The estimated total funding available for fiscal year 2005 for nursing facility reimbursement is estimated at approximately $151,717,360 combined state funds, state special revenue, federal funds, and patient contributions. Appropriated days for state fiscal year 2005 are estimated at 1,252,000. The estimated financial impact of the proposed provider funding increase is approximately $5.3 million in additional state, special revenue and federal funds in fiscal year 2005 over the FY 2004 appropriated level.

The estimated total funding impact of the one time payments to "at risk" non-state governmental providers and other nursing facilities not determined to be "at risk" is estimated at $7,089,712 of state special revenue funds and approximately $25,921,920 in total appropriated funding for the Medicaid Nursing Facility program.

If adopted, the proposed changes to ARM 37.40.302, 37.40.320, 37.40.330, 37.40.402 and 37.40.405 would have no financial or budget effects.

5. The Department intends to make these rule changes effective July 1, 2004. The legislative funding increases will be available July 1, 2004, to allow the increases in reimbursement that are being proposed for fiscal year 2005. This date is necessary to comply with legislative directives for funding increases for nursing facilities.

6. Interested 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 20, 2004. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State April 12, 2004.

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	)	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 16, 2003, the department published MAR Notice No. 6-144 regarding the public hearing on the proposed adoption and amendment of the above-stated rules at page 2125 of the 2003 Montana Administrative Register, Issue Number 19, and on February 13, 2004, published notice of the adoption and amendment at page 313 of the 2004 Montana Administrative Register, Issue No. 3.

2. The corrected notice is being filed to correct a renumbering change made in ARM 6.6.508 that is referenced in ARM 6.6.517(5), but not changed in that rule.

3. The rule is corrected as follows:

6.6.517 PERMITTED COMPENSATION ARRANGEMENTS (1) through (4) remain as amended.

(5) As part of the annual filing under ARM 6.6.508~~(9)~~(3), the entity providing medicare supplement policies shall provide copies of commission schedules.

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

4. All other rule changes adopted and amended remain the same.

5. Replacement pages for the corrected notice of adoption and amendment were submitted to the Secretary of State on March 31, 2004.

JOHN MORRISON, State Auditor
and Commissioner of Insurance

By: /s/ Alicia Pichette
Alicia Pichette
Deputy Insurance Commissioner

By: /s/ Christina L. Goe
Christina L. Goe
Rule Reviewer

Certified to the Secretary of State on April 12, 2004.

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

In the matter of the amendment of ARM 12.11.640 pertaining to a no wake zone on the Swan River) NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 30, 2003, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-297 regarding a public hearing on the proposed amendment of ARM 12.11.640 creating a new no wake zone on the Swan River at page 2348 of the 2003 Montana Administrative Register, Issue Number 20. On December 11, 2003, the commission published MAR Notice No. 12-300 notifying the public that the public hearing date for the proposed amendment had been changed from January 14, 2004, to January 17, 2004, at page 2679 of the Montana Administrative Register, Issue Number 23.

2. The commission has amended ARM 12.11.640 with the following changes, stricken matter interlined, new matter underlined:

12.11.640 SWAN RIVER (1) Swan River is located in Flathead and Lake counties.

(2) In Lake County, the Swan River is limited to a controlled no wake speed, as defined in ARM 12.11.101, in the following area~~s~~:

(a) from the mouth of Swan Lake to Porcupine Bridge approximately 4 1/2 miles.

(3) In Flathead and Lake counties, the Swan River is limited from July 1 to September 15 of each year to either a controlled no wake speed, as defined in ARM 12.11.101, or the minimum operating speed necessary to progress upstream in the following area:

(a) from where the Swan River flows out of Swan Lake in Lake County, as marked, to where Bear Creek enters the Swan River in Flathead County.

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-106, 87-1-303, MCA

3. The commission received 143 letters supporting the no wake zone. One individual, representing all those present, testified in favor of the proposal at the public hearing. The commission did not receive any public comment opposing the proposal. The following is a summary of the comments received which appear with the commission's response:

COMMENT 1: All of the comments received favored the adoption of a no wake zone on this portion of the river. The proponents stated that data gathered by the Department of Transportation in connection with use of an area bridge

revealed that this section of the river was primarily used by floaters. Other commentors stated that the river was too shallow and rocky to operate watercraft at high speeds. According to these individuals, sometimes community residents have rescued stranded motor boats with ropes or by allowing egress off the river across private property. Another individual stated that outfitters prefer a quiet river for their clients, and the no wake zone may further that interest also.

RESPONSE: The commission agrees that a no wake zone is appropriate on the portion of the Swan River covered by the rule. However, the commission amended the original proposal to allow for time periods when there are fewer floaters on the river and high flows expand the river channel and enable motorized watercraft to use the river more safely. Additionally, the commission changed the rule proposal to provide for lawful progress of motorized watercraft upstream. While watercraft can progress downstream slowly without creating a wake, watercraft traveling upstream against the water flow will need more power and may create a wake, although the craft is traveling slowly.

/s/ Dan Walker
Dan Walker, Chairman
Fish, Wildlife and Parks Commission

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

Certified to the Secretary of State April 12, 2004

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.5.101, 23.5.102 and 23.5.105 to incorporate amendments to federal regulations pertaining to motor vehicle standards previously incorporated by reference in current rules and to make general revisions to clarify scope of rules	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 24, 2003, the Department of Justice published MAR Notice No. 23-5-143 regarding the proposed amendment of the above-stated rules at page 2816 of the 2003 Montana Administrative Register, issue number 24.

2. The department has amended ARM 23.5.101 and 23.5.105 exactly as proposed.

3. Based on written comments received from Northwestern Energy and the Montana Electric Cooperatives' Association, the department has amended ARM 23.5.102 with the following changes, deleted matter interlined, new matter underlined:

23.5.102 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS (1) through (2)(f) remain as proposed.

(g) For the purpose of 49 CFR part 395, drivers of utility service vehicles are exempt from the hours of service requirements consistent with P.L. 108-199.

(h) For the purpose of 49 CFR 395.8, a person exempted from 49 CFR 395.3 pursuant to the exclusion set forth in 49 CFR 395.1(k) must keep a daily record of the number of hours worked. No record of duty status must be maintained. The format of the daily record may be determined by the record keeper, so long as the format includes a provision for entry of hours worked by calendar day. The daily record must be retained for a period of six months from initial entry date. Payroll records or time sheets may be used for this purpose, if they are updated on a daily basis.

AUTH: 44-1-1005, MCA
IMP: 44-1-1005, MCA

4. The following comment was received and appears with the Department of Justice's response.

COMMENT:

Written comments were received from Northwestern Energy and the

Montana Electric Cooperatives' Association. Both entities expressed concern that the State's rules did not conform with P.L. 108-199 which effectively prohibits, through September 30, 2004, the implementation or enforcement of federal hours of service regulations as those regulations apply to utility service vehicles. Northwestern Energy and the Montana Electric Cooperatives' Association recommended amending ARM 23.5.102 to make the rule consistent with the federal regulations.

RESPONSE:

The rule has been amended to clarify that the drivers of utility service vehicles are exempt from the hours of service regulations consistent with P.L. 108-199. Because of compatibility requirements in Federal and Montana law, the state may not adopt motor carrier safety regulations that are in conflict with or have a substantially different effect than those adopted at the federal level. The amendment to ARM 23.5.102 is necessary to provide consistency between the federal and state regulations governing motor carrier safety.

MONTANA DEPARTMENT OF JUSTICE

By: /s/ MIKE McGRATH
MIKE McGRATH
Attorney General

/s/ ALI BOVINGDON
ALI BOVINGDON
Rule Reviewer

Certified to the Secretary of State April 12, 2004.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 24.29.954, relating to workers' compensation assessments	))))	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 11, 2003, the Department of Labor and Industry published MAR Notice No. 24-29-180 regarding a public hearing on the proposed amendment of the above-stated rule, relating to workers' compensation assessments, at page 2681, 2003 Montana Administrative Register, issue number 23.

2. On March 25, 2004, the Department published the Notice of Amendment regarding the amendment of the above-stated rule, relating to workers' compensation assessments, at page 645, 2004 Montana Administrative Register, issue number 6.

3. During preparation of replacement pages, the Department noticed that it failed to underscore the phrase "or beneficiaries" as part of the proposed amendment to ARM 24.29.954(9)(e) or to show that phrase as being added at the time of amendment. The rule as amended should have read as follows, stricken matter interlined, new matter underlined:

24.29.954 CALCULATION OF AMOUNT OF ADMINISTRATION FUND ASSESSMENT (1) though (9)(d) remain as amended.

(e) various other miscellaneous costs that do not constitute a compensation ~~an indemnity~~ benefit or medical benefit provided to the claimant or beneficiary.

(10) through (12) remain as amended.

AUTH: 39-71-203, MCA
IMP: 39-71-201, 39-71-203 and 39-71-209, MCA

4. Replacement pages with the correct version of the text of the rule were submitted on March 31, 2004, to the Secretary of State.

/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 April 12, 2004

BEFORE THE STATE ELECTRICAL BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW RULE I (24.141.506), pertaining to master electrician license qualifications	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 30, 2003, the State Electrical Board published MAR Notice No. 24-141-27 regarding the public hearing on the proposed adoption of the above-stated rule relating to master electrician license qualifications, at page 2377 of the 2003 Montana Administrative Register, issue no. 20.

2. On November 25, 2003, a public hearing was conducted in Helena, Montana, and two members of the public spoke at the public hearing. In addition, two written comments were received prior to the closing of the comment period.

3. The State Electrical Board (Board) has thoroughly considered all of the comments made. A summary of the comments received and the Board's responses are as follows:

COMMENT 1: Mr. W. R. Patte, a master electrician, submitted one comment and stated that paragraph three was "unclear". No provisions are offered to "grandfather" those who have had master electrician licenses for long periods. He asked what method would be used to verify the requirements and to certify their accuracy.

RESPONSE 1: The Board thanked the commenter and stated that it believes this makes a level playing field. All contractors should have the same requirements. The NEW RULE actually extends the time needed to obtain a masters license but that a two-year trade school would take one year off the requirement. The word of the contractor would be honored just as it is now. The Board does reserve the right, however, to seek verification of any information submitted by an applicant on a case-by-case basis. There would be no elimination of master electricians who were already licensed, nor was there ever any intent to do so. The requirements being adopted in NEW RULE I will only apply to new applicants for a master's license, and to those individuals who re-apply for a master's license after their license has lapsed. The Board was in disagreement with Mr. Patte as to the paragraph being unclear. It felt it was as clear as they could make it and they were satisfied with its clarity. Time would tell, and if any confusion were to become evident, the Board would then address any issues of clarity.

COMMENT 2: Mr. Joel Hecker submitted a written comment and stated he was strongly opposed to the proposed rule change. He felt the proposed rule would hurt the customer and individuals trying to advance themselves. He was also worried that the NEW RULE would increase the amount of time it took to become a master electrician. He then wanted to know if the Board felt this would adversely affect the outlying areas of the state.

RESPONSE 2: The Board responded that in their collective opinion, the NEW RULE would increase public safety and, in fact, an applicant needs time to gain the knowledge to become a master electrician. The Board also felt that the proposed NEW RULE would not increase the time necessary. The Board stated that the public in the outlying areas of the state would be protected just the same as anywhere else in Montana. The Board notes that in some rural parts of Montana there are relatively few electricians. The Board believes that because of that fact, a master electrician must have experience in all three aspects of electrical work - residential, commercial and industrial - in order to properly perform or supervise work in any of those three areas.

COMMENT 3: Mr. Marvin Wilson testified that he was in complete support of the proposed NEW RULE.

RESPONSE 3: The Board thanked Mr. Wilson for his comment and support in this matter.

COMMENT 4: Ms. Margaret Morgan testified that she too, was in complete support of the proposed NEW RULE.

RESPONSE 4: The Board thanked Ms. Morgan and was appreciative of the input.

4. After consideration of the comments, the Board has adopted NEW RULE I (24.141.506) exactly as proposed.

MONTANA STATE ELECTRICAL BOARD
RON VAN DIEST, CHAIRMAN

/s/ WENDY J. KEATING
Wendy J. Keating Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State April 12, 2004.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.70.110, 37.70.115, 37.70.401, 37.70.402, 37.70.406, 37.70.407, 37.70.408, 37.70.601 and 37.70.607 pertaining to Low Income Energy Assistance Program (LIEAP)	)	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On February 26, 2004, the Department of Public Health and Human Services published MAR Notice No. 37-320 pertaining to the public hearing on the proposed amendment of the above-stated rules relating to Low Income Energy Assistance Program (LIEAP) at page 395 of the 2004 Montana Administrative Register, issue number 4.

2. The Department has amended ARM 37.70.110, 37.70.115, 37.70.401, 37.70.402, 37.70.406, 37.70.407, 37.70.408, 37.70.601 and 37.70.607 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 April 12, 2004.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of new rules I and II and the amendment of ARM 37.79.101, 37.79.102, 37.79.201, 37.79.202, 37.79.206, 37.79.207, 37.79.301, 37.79.302, 37.79.303, 37.79.308, 37.79.309, 37.79.316, 37.79.317, 37.79.321, 37.79.322, 37.79.326, 37.79.501, 37.79.503, 37.79.504, 37.79.505, 37.79.601, 37.79.602, 37.79.605, 37.79.606, 37.79.607, and 37.79.801 pertaining to children's health insurance plan (CHIP)	)	CORRECTED NOTICE OF AMENDMENT

TO: All Interested Persons

1. On November 12, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-307 regarding the proposed adoption and amendment of the above-stated rules at page 2503 of the 2003 Montana Administrative Register, issue number 21, and on February 12, 2004, published notice of the adoption and amendment on page 330 of the 2004 Montana Administrative Register, issue number 3.

2. This corrected notice is being filed to correct errors in ARM 37.79.102, 37.79.201, 37.79.316, 37.79.322, and 37.79.605. The corrections are as shown in paragraph 3 below.

3. The rules are corrected as follows. New matter is underlined, deleted matter is interlined.

37.79.102 DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) and (2) remain as amended.

(3) "Benefits" means the services an enrollee is eligible for as outlined in this subchapter. All benefits with the exception of dental and ~~eyeglasses~~ eyeglass services~~,~~ are provided to an enrollee through the insurer.

(4) through (10) remain as amended.

(11) "Family" means a group of individuals who are residing together as a single economic unit. ~~Grandparents, aunts, uncles, cousins and other relatives are not considered to be family members for purposes of this subchapter.~~ Members of the economic unit are considered to live together even though a member may reside temporarily in a residential treatment

setting. For purposes of this subchapter, a minor living alone shall be considered an economic unit.

(24) "Premium" means the amount of money the department pays monthly to an insurer for the provision of benefits for each enrollee. The premium is paid whether or not the enrollee received covered benefits during the month for which the premium is intended. All benefits outlined in this subchapter, except ~~eyeglasses~~ eyeglass and dental benefits, are covered through payment of this premium.

(25) through (29) remain as amended.

AUTH: Sec. 53-4-1009, MCA
IMP: Sec. 53-4-1003, MCA

37.79.201 ELIGIBILITY (1) An applicant may be eligible for covered services under CHIP if:

(a) through (g) remain as amended.

(h) the child does not have or has not had creditable health insurance coverage as defined in 42 USC 300gg(c) during the three months prior to application for CHIP. This three month waiting period shall not apply if the guardian providing the insurance:

(i) through (h)(iv) remain as amended.

(v) has an employer who does not offer dependent coverage~~.~~;

(i) through (4) remain as amended.

(5) Applicants who are losing medicaid coverage or who were denied medicaid for a reason other than the family withdrew their application or failed to comply with medicaid requirements will be referred to CHIP via an electronic report. CHIP eligibility will be determined and applicants will be enrolled in CHIP or placed on the CHIP waiting list.

(a) Applicants will be mailed a form to authorize the use and disclosure of health information that will include questions about the family's health insurance and whether health insurance is available to the family.

(6) through (10) remain as amended.

AUTH: Sec. 53-4-1004 and 53-4-1009, MCA
IMP: Sec. 53-4-1003 and 53-4-1004, MCA

37.79.316 MENTAL HEALTH BENEFITS (1) Mental health benefits include:

(a) remains as amended.

(b) outpatient services furnished by public or private licensed and qualified ~~practioners~~ practitioners in a community based setting or in a mental hospital.

(2) through (4) remain as amended.

AUTH: Sec. 53-4-1009, MCA
IMP: Sec. 53-4-1003, MCA

37.79.322 ~~EYEGLASSES~~ EYEGLASS BENEFITS (1) through (4) remain as amended.

AUTH: Sec. 53-4-1009, MCA
IMP: Sec. 53-4-1003, MCA

37.79.605 PARTICIPATING PROVIDERS (1) through (5) remain as amended.

~~(6)~~ (7) Physicians, advanced practice registered nurses and physician assistants shall either have admitting privileges to at least one general or critical shortage area hospital or shall have a mechanism in place to ensure hospitalization when appropriate.

~~(7)~~ (8) through (11)(b) remain as amended.

AUTH: Sec. 53-4-1009, MCA
IMP: Sec. 53-4-1003, MCA

4. The Department discovered some inconsistencies between the notice of proposal published as MAR Notice No. 37-307 on page 2503 of the 2003 Montana Administrative Register, issue number 21, and the notice of adoption published on February 12, 2004, on page 330 of the 2004 Montana Administrative Register, issue number 3. The Department is clarifying and correcting these inconsistencies in this notice of correction to avoid any future confusion.

The word "eyeglasses" in ARM 37.79.102(3) and (24) and in the catchphrase of ARM 37.79.322 was made plural without showing the change. The word should have been left as "eyeglass".

In ARM 37.79.102(11), a sentence was inadvertently deleted from the body of the rule. The intent was to strike the sentence entirely as explained in the rationale.

ARM 37.79.201 in (1)(g)(v), the sentence ends with a period and should have been a semi-colon.

In ARM 37.79.201(5)(a) there was text added that was not underlined. The underlining has been added in to show the new text.

In ARM 37.79.316(1)(b), the word "practioners" was misspelled. The correct spelling is "practitioners".

In ARM 37.79.605, there was a typographical error in the notice of adoption. Section (6) was renumbered to (7) in the proposal notice and erroneously shown to still be (6) in the notice of adoption. This also affected the final line of the rule where the numbers should have read "(8) through (11)(b) remain as adopted."

5. Replacement pages for the corrected notice of adoption and amendment were submitted to the Secretary of State on March 31, 2004.

6. All other rule changes adopted and amended remain the same.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State April 12, 2004.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I (42.15.806) and II (42.15.807); amendment of ARM 42.15.802, 42.15.803, 42.15.804, and 42.15.805; and repeal of ARM 42.15.801 relating to the taxation of family education savings accounts	)))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On February 26, 2004, the department published MAR Notice No. 42-2-729 regarding the proposed adoption, amendment, and repeal of the above-stated rules relating to the taxation of family education savings accounts at page 414 of the 2004 Montana Administrative Register, issue no. 4.

2. A public hearing was held on March 22, 2004, to consider the proposed amendment. Mary Whittinghill, President of the Montana Taxpayers' Association, appeared but did not provide any testimony.

3. No written comments were received.

4. After further review, the department further amends the following rules:

42.15.802 CONTRIBUTIONS TO MONTANA FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS (1) A taxpayer is allowed to deduct the lesser of the total contributions actually made to one or more MONTANA family education savings accounts during the tax year, or $3,000. A deduction is allowed only for contributions to accounts owned by the taxpayer, the taxpayer’s spouse, or, if the taxpayer's child or stepchild is a Montana resident, the taxpayer's child or stepchild.

(2) FOR PURPOSES OF THE $3,000 REDUCTION TO MONTANA ADJUSTED GROSS INCOME, CONTRIBUTIONS MUST BE MADE TO A MONTANA FAMILY EDUCATION SAVINGS ACCOUNT. CONTRIBUTIONS MADE TO OTHER STATE OR PRIVATE FAMILY EDUCATION SAVINGS ACCOUNTS DO NOT QUALIFY FOR THE MONTANA REDUCTION TO INCOME.

(3) For Montana tax purposes, deductible contributions to a family education savings account do not include the earnings on the account.

AUTH: 15-30-305 and 15-62-201, MCA
IMP: 15-30-111, 15-62-201, and 15-62-207, MCA

42.15.804 VERIFICATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT CONTRIBUTIONS AND WITHDRAWALS (1) remains as proposed.

(2) Each program manager shall provide to the department for each tax year a report identifying all withdrawals made

during such year from family education savings accounts during such year for which the account owner is, or was at the time the account was opened, a Montana resident. Such report shall be in electronic form that may be sorted by names and social security numbers of the account owners and the distributees, and shall be submitted within ~~one~~ TWO monthS following the close of the year. The report shall include for each account owner and distributee the following:

(a) full name;

(b) last reported address;

(c) amount of the withdrawals (and to the extent that internal revenue service requires such information with respect to withdrawals, the portion constituting contributions and the portion constituting earnings);

(d) social security number; and

(e) in the case of the account owner, a notation as to whether the distribution is an early withdrawal.

(3) through (7) remain as proposed.

AUTH: 15-30-305 and 15-62-201, MCA
IMP: 15-30-111, ~~and~~ 15-62-201, and 15-62-208, MCA

4. Therefore, the department amends ARM 42.15.802 and 42.15.804 with the changes shown above; adopts New Rules I (ARM 42.15.806) and II (ARM 42.15.807); amends ARM 42.15.803 and 42.15.805; and repeals ARM 42.15.801 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.discoveringmontana.com/revenue, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." 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/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State April 12, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I (42.15.901); II (42.15.902); III (42.15.903); IV (42.15.904); V (42.15.905); VI (42.15.906); and VII (42.15.907) relating to first-time home buyers	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On February 26, 2004, the department published MAR Notice No. 42-2-730 regarding the proposed adoption of the above-stated rules relating to first-time home buyers at page 422 of the 2004 Montana Administrative Register, issue no. 4.

2. A public hearing was held on March 22, 2004, to consider the proposed adoption. Mary Whittinghill, President of the Montana Taxpayers' Association, appeared but did not provide any testimony.

3. No written comments were received. Therefore, the department adopts the rules as proposed.

4. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at http://www.discoveringmontana.com/revenue, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." 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	/s/ Don Hoffman
CLEO ANDERSON	DON HOFFMAN
Rule Reviewer	Acting Director of Revenue

Certified to Secretary of State April 12, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.26.302, 42.26.303, 42.26.306, and 42.26.311 relating to the water's-edge election for multinational corporations	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 15, 2004, the department published MAR Notice No. 42-2-728 regarding the proposed amendment of the above-stated rules relating to water's-edge election for multinational corporations at page 70 of the 2004 Montana Administrative Register, issue no. 1.

2. A public hearing was held on March 24, 2004, to consider the proposed amendment. Mary Whittinghill, President of the Montana Taxpayers' Association, appeared but did not provide any testimony.

3. No written comments were received. Therefore, the department amends the rules as proposed.

4. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at http://www.discoveringmontana.com/revenue, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." 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/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State April 12, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I (42.26.501), II (42.26.502), III (42.26.503), IV (42.26.504), V (42.26.505), VI (42.26.506), VII (42.26.507), VIII (42.26.508), IX (42.26.509), X (42.26.510), XI (42.26.511), XII (42.26.1001), XIII (42.26.1002), XIV (42.26.1003), XV (42.26.1101), XVI (42.26.1102), and XVII (42.26.1103); and repeal of ARM 42.24.214 relating to corporation taxes and multi-state tax commission	)))))))))))))))))))	NOTICE OF ADOPTION AND REPEAL

TO: All Concerned Persons

1. On January 15, 2004, the department published MAR Notice No. 42-2-727 regarding the proposed adoption and repeal of the above-stated rules relating to corporation taxes and multi-state tax commission at page 51 of the 2004 Montana Administrative Register, issue no. 1.

2. A public hearing was held on March 24, 2004, to consider the proposed adoption and repeal. No comments were received.

3. Therefore, the department adopts and repeals the rules as proposed.

4. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at http://www.discoveringmontana.com/revenue, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." 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/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State April 12, 2004

VOLUME NO. 50 OPINION NO. 6

CRIMINAL JUSTICE INFORMATION - Dissemination of crime victim information;
POLICE DEPARTMENTS - Dissemination of crime victim information;
PRIVACY - Dissemination of crime victim information;
SHERIFFS - Dissemination of crime victim information;
STATUTORY CONSTRUCTION - Dissemination of crime victim information;
MONTANA CODE ANNOTATED - Sections 44-5-103, (3), (12), (13), -303, -311, (1), (3), -502 to -504, -507;
MONTANA CONSTITUTION - Article II, sections 9, 10;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 119 (1988).

HELD:

1. When a crime victim requests confidentiality, the public dissemination of certain information, including the address, telephone number, or place of employment of the victim or a member of the victim's family is prohibited, unless an exception listed in Mont. Code Ann. § 44-5-311(1) applies.

2. Information directly or indirectly disclosing the identity of victims of certain sex crimes may not be publicly disseminated unless an exception listed in Mont. Code Ann. § 44-5-311(1) applies.

3. A law enforcement agency may disclose a crime scene location under Mont. Code Ann. § 44-5-311(1), (3), even if such disclosure may suggest the identity of the victim.

April 1, 2004

Ms. Mary Van Buskirk
Havre City Attorney
P.O. Box 231
Havre, Montana 59501-0231

Dear Ms. Van Buskirk:

You have requested my opinion concerning the dissemination provisions of the Montana Criminal Justice Information Act of 1979. I have phrased your questions as follows:

1. Does the creation of a policy providing complete confidentiality to victims upon their request violate the dissemination procedures found in Mont. Code Ann. § 44-5-303?

2. Can the Havre Police Department withhold crime scene address information in instances where

> publicly disclosing the address of the crime scene would suggest the identity of the victim?

The answers to your questions require an examination of Montana's Criminal Justice Information Act of 1979 (hereinafter the Act). The Act provides guidance for the dissemination of criminal justice information and specifically covers the dissemination procedure for victim's information.

The Montana Legislature considered two competing fundamental constitutional rights, the right of individual privacy, article II, section 10 of the Montana Constitution, and the public's right to know, article II, section 9 of the Montana Constitution, as well as the comments and suggestions of Montana press representatives, in drafting and enacting the Criminal Justice Information Act of 1979. See Minutes of Senate Judiciary Committee, February 7, 1979; Minutes of House Judiciary Committee, March 13, 1979.

When the Act was passed following extensive amendment in committee, it contained the following statement of purpose:

> The purpose of this chapter is to require the photographing and fingerprinting of persons under certain circumstances, to ensure the accuracy and completeness of criminal history information, and to establish effective protection of individual privacy in confidential and nonconfidential criminal justice information collection, storage and dissemination.

The Act's purpose of protecting individual privacy is manifested by the division of all criminal justice information into two categories, "public criminal justice information," which is specifically enumerated and may be disseminated to the public, and "confidential criminal justice information," which in addition to being enumerated, is also defined as "any other criminal justice information not clearly defined as public criminal justice information." Mont. Code Ann. § 44-5-103(3), (12). Confidential criminal justice information cannot be disseminated to the public. Mont. Code Ann. § 44-5-303.

The Act defines public criminal justice information as:

> (a) information made public by law;
> (b) information of court records and proceedings;
> (c) information of convictions, deferred sentences, and deferred prosecutions;
> (d) information of postconviction proceedings and status;
> (e) information originated by a criminal justice agency, including:
> (i) initial offense reports;
> (ii) initial arrest records;
> (iii) bail records; and

(iv) daily jail occupancy rosters;
(f) information considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or
(g) statistical information.

Mont. Code Ann. § 44-5-103(13).

Obviously, if information deemed confidential appears within one of the public documents listed in the statute, a question arises as to precisely what may be publicly disseminated. In examining the issue of confidential information within initial offense reports and initial arrest records, Attorney General Mike Greely determined that if an initial offense report or initial arrest record contained information defined as confidential by the Act, that information would need to be redacted prior to public dissemination. 42 Op. Att'y Gen. No. 119 (1988).

In 1995, the Act was amended to address the dissemination of victim information. Mont. Code Ann. § 44-5-311 specifically removes victim information from the realm of public criminal justice information by mandating that it not be disseminated under certain circumstances. Mont. Code Ann. § 44-5-311 states:

Nondisclosure of information about victim.

(1) If a victim of an offense requests confidentiality, a criminal justice agency may not disseminate, except to another criminal justice agency, the address, telephone number, or place of employment of the victim or a member of the victim's family unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.

(2) The court may not compel a victim or a member of the victim's family who testifies in a criminal justice proceeding to disclose on the record in open court a residence address or place of employment unless the court determines that disclosure of the information is necessary.

(3) A criminal justice agency may not disseminate to the public any information directly or indirectly identifying the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, or 45-5-507 unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.

Mont. Code Ann. § 45-5-311.

This is an area in which statutory and constitutional provisions overlap. Analysis therefore begins with the provisions of the statutes, though it may not necessarily end there. See Worden v. Montana Bd. of Pardons and Parole, 1998 MT 168, ¶ 37, 289 Mont. 459, 471, 962 P.2d 1157, 1165 (Board obligated to assert and weigh privacy interests under Article II, section 9 standards in determining whether statutory provisions governing parole records apply). Ordinary principles of statutory construction must be applied to determine the proper interpretation of section 44-5-311. The fundamental rule of statutory construction is that the intention of the Legislature controls. The legislative intent should be determined from the plain language of the statute if possible. Missoula County v. American Asphalt, Inc. 216 Mont. 423, 426, 701 P.2d 990, 992 (1985); W. D. Constr., Inc. v. Gallatin County Bd. of Comm'rs, 218 Mont. 348, 351, 707 P.2d 1111, 1113 (1995).

This Act represents a legislative attempt to balance two competing fundamental rights under the Montana Constitution: the public's right to know and the individual's right of privacy. Mont. Const. Art II, §§ 9, 10. A statute should be construed in a manner that "uphold[s] the constitutionality of legislative enactments if such can be accomplished by reasonable construction." Belth v. Bennett, 227 Mont. 341, 345, 740 P.2d 638, 641 (1987) (citation omitted). The Legislature, in enacting this provision of the Act, identified significant privacy concerns for crime victims. The reasoning behind this determination is sound. Disclosure of the identity of a crime victim could compound what is already a deeply traumatic experience. Further, protecting the sensitive privacy concerns of the victims also serves the public interest in efficient law enforcement, because they promote prompt reporting of criminal activity. As noted by Attorney General Greely, "routine public disclosure of the child victims of incest, for example, would have an obvious chilling effect on the reporting of this widespread and insidious crime." 42 Op. Att'y Gen. No. 119 (1988)

The plain language of the Act prohibits a criminal justice agency from disseminating "the address, telephone number, or place of employment of the victim or a member of the victim's family" if the victim requests confidentiality. Mont. Code Ann. § 44-5-311(1). In addition, with respect to the victim of certain enumerated sex crimes, the agency may not disclose "any information directly or indirectly identifying the victim." Mont. Code Ann. § 44-5-311(3). Therefore, it is my opinion that under the Act as interpreted by 42 Op. Att'y Gen. No. 119 (1988), this victim information may be redacted from public criminal justice information documents prior to dissemination under the conditions described in Mont. Code Ann. § 44-5-311(1), (3) if the victim requests confidentiality or is the victim of a sex crime. Two exceptions, one statutory and the other constitutional, must be considered, however, in applying the statute.

Both pertinent subsections of the statute provide some limitations on the prohibition of the dissemination of victim information. Disclosure of victim information is not prohibited if disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause. Mont. Code Ann. § 44-5-311.

I recognize that in some of Montana's communities, the disclosure of an address of a crime scene may suggest the identity of the victim. However, as stated above, ordinary rules of statutory interpretation must govern my analysis of this issue. This again requires an examination of the plain language of the statute as a first step in determining legislative intent. American Asphalt, Inc., 701 P.2d at 992; W. D. Constr., Inc., 707 P.2d at 1113.

This Act represents the Montana Legislature's attempt to balance two important rights: the right to know and the right to privacy. Any attempt to balance these rights must begin with recognition of the public's long-standing right to know about the existence of crime within the community. Disclosure alerts the public that a particular crime has occurred and serves to warn the community about any danger involved. An alerted public can provide law enforcement with valuable investigative information. This limiting language requiring disclosure of crime scene information is quite specifically placed in two of the three subsections referring to dissemination of victim information. Mont. Code Ann. § 44-5-311(1) and (3).

The plain language of the statute clearly requires dissemination of crime scene information regardless of the status of the victim. It is, therefore, my opinion that disclosure of crime scene information generally is required even if the victim of the crime has requested confidentiality or is the victim of a sex crime and such disclosure may inadvertently implicate the identity of the victim.

As noted above, the issue of disclosure of criminal justice information frequently involves the intersection of statutory provisions and the constitutional rights guaranteed by Article II, sections 9 and 10 of the Montana Constitution. While in many cases the balance struck by the statute will produce an appropriate weighing of the respective interests in disclosure, there may be cases in which the facts and circumstances of the matter dictate a result different from the one produced by straightforward application of the statute. Any rule that would allow the statute to determine conclusively whether the right to privacy clearly outweighs the interest in public disclosure would run afoul of the constitution as interpreted in Worden. Thus, in applying the statute, the agency must evaluate in every case whether the producing or withholding of information would violate Article II, sections 9 and 10. Worden, 1998 MT ¶ 37;

see In re Lacy, 239 Mont. 321, 325, 780 P.2d 186, 188 (1989) (person is "authorized by law to receive" information if disclosure satisfies the balancing test of Article II, section 9). In doubtful cases, the agency may submit the matter to the courts for determination under the Uniform Declaratory Judgments Act, Mont. Code Ann. Tit. 27, ch. 8, or Mont. Code Ann. § 44-5-311(1)(3).

THEREFORE, IT IS MY OPINION:

1. When a crime victim requests confidentiality, the public dissemination of certain information, including the address, telephone number, or place of employment of the victim or a member of the victim's family is prohibited, unless an exception listed in Mont. Code Ann. § 44-5-311(1) applies.

2. Information directly or indirectly disclosing the identity of victims of certain sex crimes may not be publicly disseminated unless an exception listed in Mont. Code Ann. § 44-5-311(1) applies.

3. A law enforcement agency may disclose a crime scene location under Mont. Code Ann. § 44-5-311(1), (3), even if such disclosure may suggest the identity of the victim.

Very truly yours,

/s/ Mike McGrath
MIKE McGRATH
Attorney General

mm/pdb/jym

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA
GAMBLING CONTROL DIVISION

In the Matter of the Petition for Declaratory Ruling by Barnes, Inc., d/b/a Prospector Casino, Gambling Operator Lic. No. 02-0995, and Silver City Corporation, d/b/a Silver City Casino, Gambling Operator Lic. No. 02-1027, Petitioners	)	Docket No. 04-172
	)	DECLARATORY RULING

Pursuant to 2-4-501 and 23-5-110, MCA, et seq., the Gambling Control Division of the Montana Department of Justice has jurisdiction over this matter and issues this declaratory ruling as to the application of 23-5-629, MCA.

QUESTION PRESENTED

Barnes, Inc. and Silver City Corporation have submitted to the Gambling Control Division a request for declaratory ruling as to the following question:

> Whether § 23-5-629 will cause [video gambling] machine permits not to be issued for one of these casinos as of October 1, 2005.

FACTS

In 1973, a liquor license was issued to Barnes, Inc., d/b/a Red Barn, at its location at 907 Smelter Ave., Black Eagle, Montana. According to the information supplied by petitioners, the original stockholders in Barnes, Inc. were DeLorne Barnes, his wife Inez, and their sons Jack, Kim and Richard. Currently, Jack Barnes is the sole shareholder of Barnes, Inc., d/b/a Prospector Casino at the same location.

Silver City Corporation was originally owned by James Reger, as sole shareholder. Silver City Corporation obtained its liquor license by transfer of ownership in 1989. In 1991, all shares in Silver City Corporation were sold and transferred to Kim and Nancy Barnes, d/b/a Silver City Casino. Nancy Barnes is the wife of Richard Barnes. In 1991, Silver City Corporation transferred its liquor license to its present location at 907 Smelter Ave. (a/k/a 2020 Old Havre Highway), Black Eagle, Montana. The shares owned by Kim and Nancy Barnes were returned to the corporation in 1992, and at about the same time the shares were reissued to Nancy and Collette Barnes, who each own 50% of the corporate shares. Collette Barnes is married to Jack Barnes.

BACKGROUND

In 1985 and 1987, the Montana legislature legalized certain forms of gambling, including video gaming. The legislature mandated that gambling be regulated closely, and it limited the size of casinos in order to prevent some of the problems associated with larger operations. The legislature further declared that gambling licenses must be "piggy-backed" onto liquor licenses. This scheme took advantage of the limiting nature of the liquor license quota system, for by law there are only a certain number of liquor licenses that can be issued in a community. Also, this had the salutary effect of restricting gaming machines to places where primarily only adults could go. In 1989, the legislature mandated that there could be only 20 video gambling machines for each gambling license. The rule was designed to limit the size of casinos and lessen the possible negative impact larger establishments could have on a community.

Soon, however, enterprising casino operators began acquiring multiple liquor/gambling licenses for a single property, thus multiplying the number of gaming machines under one roof and circumventing the purpose of the gambling laws. The 1991 legislature, in order to stop such "casino-stacking," passed 23-5-117, MCA. This statute allowed casinos to be "side-by-side," but mandated that they must be separated by a solid wall without doors. A five-year "grandfather" period was granted for operators with stacked casinos to recoup their investment. (This was later extended to a generous 10 years.)

In 1995, the legislature determined that the carefully worded restrictions of 23-5-117, MCA, were not enough to prohibit the negative impact such "side-by-side" casinos had on communities. Understandably, the net effect of these side-by-side operations was perceived to be equivalent to that of large casinos. Consequently, the legislature passed 23-5-629, MCA, which mandates that casinos under common ownership must be at least 150 feet apart. The legislature mitigated the harsh effects this location restriction could have on current side-by-side establishments by again implementing a 10-year grandfather clause. The legislature also granted an exception to a narrow class of such establishments that had been licensed to sell alcohol on-premises since 1985, and have since remained within the same family.

ASSERTIONS OF LAW

> 23-5-111. Construction and application. In view of Article III, section 9, of the Montana constitution, parts 1 through 8 of this chapter must be strictly construed by the department and the courts to allow only those types of gambling and gambling activity that are specifically and clearly allowed by those parts.
>
> 23-5-629. Permit for premises within 150 feet of another premises. (1)(a) A licensee may not be

granted a permit for video gambling machines allowed on a premises under 23-5-611 if, at the time of application for the permit, the licensee's premises are within 150 feet of, or have an external structural connection not amounting to a common internal wall, as that term is used in 23-5-117, to, a premises that already has a permit for video gambling machines allowed on a premises under 23-5-611 and if the two premises have one or more common owners. A measurement of the distance between two premises must be taken between the nearest exterior wall of each premises.

(b) A premises for which an on-premises alcoholic beverages license was granted, was applied for, or the transfer of which was validly contracted for prior to February 1, 1995, is not subject to subsection (1)(a) during the 10-year period following October 1, 1995. A premises licensed before January 1, 1985, is not subject to subsection (1)(a) for as long as ownership remains within the immediate family that owned the premises on January 1, 1985, if ownership of the premises on October 1, 1995, was within the immediate family that owned the premises on January 1, 1985.

(2) For purposes of this section, the following definitions apply:

(a) "Affiliate" means a person or entity that controls, is controlled by, or is under common control with another person or entity. The term includes but is not limited to a premises that has:

(i) shareholders, partners, or other individual owners, by trust or otherwise, who are also shareholders, partners, or individual owners, by trust or otherwise, of the other premises;

(ii) shareholders, partners, or other individual owners, by trust or otherwise, who are income taxpayers related to the shareholders, partners, or other individual owners, by trust or otherwise, of the other premises;

(iii) an agreement with the other premises or the other premises' shareholders, partners, or other individual owners, by trust or otherwise, for the ownership and operation of gaming equipment if the agreement has other financial components, such as a landlord and tenant relationship or noninstitutional financing; or

(iv) a premises rental agreement with the other premises or its shareholders, partners, or other individual owners, by trust or otherwise, at a rental rate other than the market rental rate, as determined by a Montana independent appraisers association appraisal done at the time that the rental rate is set or changed.

(b) "Commonality of business interests" means:

(i) a contract, deed, contract for deed,

concession agreement, or lease, rental, or other agreement involving real property, with the same person or entity, except:

(A) a commercial mall with at least 50,000 square feet and at least eight separate businesses; or

(B) an agreement by a licensee to lease premises from a person or entity that also leases other premises in the same building or structure to one or more licensees if there is no other common ownership between any of the licensees; or

(ii) that the same person or entity, except a financial institution, provides the financing for:

(A) the purchase of the liquor license;

(B) the purchase of the premises; or

(C) operating expenses of more than $25,000, except for expenses allowed under 23-5-130.

(c) "Common owner" means an affiliate, immediate family member, manager, parent or subsidiary business entity, investor, person or entity with a commonality of business interests, or other person or entity able to influence the operator or manager of the premises or to prevent the operator or manager from fully pursuing the premises' separate interests.

(d) "Control" means the power to cause or direct management and policies through ownership, contract, or otherwise.

(e) "Immediate family" means a parent, children, siblings, grandchildren, grandparents, nieces, and nephews.

(f) "Investor" means a person who:

(i) advances or pledges to advance funds with the expectation of a specified or unspecified return;

(ii) guarantees a loan, except a loan guaranteed by a route operator who would not otherwise be considered a common owner; or

(iii) has an option to participate in the premises.

23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

. . .

(29) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

ANALYSIS

The question presented to the Division is whether either of these two locations will be prohibited from receiving video gambling machine permits, by operation of 23-5-629, MCA. This statute prohibits the Gambling Control Division from issuing a permit for video gambling machines allowed on a premises if (a)

at the time of application for the permit, the licensee's premises are within 150 feet of, or have an external structural connection not amounting to a common internal wall to, a premises that already has a permit for video gambling machines allowed on a premises under 23-5-611, MCA; and (b) if the two premises have one or more common owners.

23-5-629(1)(b), MCA, provides a 10-year grandfather period following October 1, 1995, for establishments which owned an on-premises alcoholic beverage license prior to February 1, 1995. The same subsection also excepts from the general prohibition those establishments which held the on-premises alcoholic beverage license before January 1, 1985 so long as ownership of the establishment (as of October 1, 1995) remained within the immediate family that owned the premises on January 1, 1985.

The facts of this case demonstrate that both premises are currently permitted for video gambling machines, both premises are within 150 feet of the other, and both premises have one or more common owners. Additionally, both premises fall within the 10-year grandfather clause of subsection (b), since both establishments owned the liquor license prior to October 1, 1995.

Barnes, Inc. falls within the exception to the prohibition under subsection (1)(b) because it held its on-premises alcoholic beverage license prior to January 1, 1985, and ownership of Barnes, Inc. remained within the immediate family as of October 1, 1995, and remains so at this time.

Silver City Corporation obtained its alcoholic beverage license in 1990. The Barnes family purchased the stock and liquor license from Mr. Reger, and transferred the liquor license to the present location, in 1991. As a result, Silver City Corporation does not fall within the exception under subsection (1)(b) because it did not hold its on-premises alcoholic beverage license prior to January 1, 1985.

RULING

Under the present circumstances, Silver City Casino is ineligible to receive video gambling machine permits after October 1, 2005. Pursuant to 23-5-629, MCA, Silver City Casino is a licensee whose premises is within 150 feet of Prospector Casino, which also has permitted video gambling machines, and the two establishments have one or more common owners. While Silver City Casino is an establishment that falls within the 10-year grandfather clause under 23-5-629(1)(b), MCA, Silver City does not fall within the exception to the general prohibition.

DONE this 12th day of April, 2004.

/s/ GENE HUNTINGTON
GENE HUNTINGTON
Administrator

/s/ CREGG W. COUGHLIN
Approved as to legal content:
CREGG W. COUGHLIN
Assistant Attorney General

Certified to the Secretary of State April 12, 2004.

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 December 31, 2003. This table includes those rules adopted during the period January 1, 2004 through March 31, 2004 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 December 31, 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 2003 and 2004 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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2.12.101	and other rules - Implementation of the Montana Information Technology Act, p. 1821, 2417
2.21.3603	and other rules - Veterans' Employment Preference Policy, p. 1699, 2077
2.59.307	and other rule - Examination Fees for Consumer Loan Businesses - Dollar Amounts to Which Consumer Loan Rates are to be Applied, p. 1147, 1802

(Public Employees' Retirement Board)

2.43.404 and other rules - Membership Options for Officials Elected to Positions Covered by the Public Employees' Retirement System and the Reporting of Those Officials by Their Employers, p. 1420, 1981

2.43.421 Uniformed Services Employment and Reemployment Right Act of 1994 (USERRA) and the Receipt of Service When Called to Perform Duty in the Uniformed Service, p. 2480, 561

2.43.422 and other rules - Purchase of Federal Volunteer Service by Members of the Public Employees' Retirement System Defined Benefit Retirement Plan, p. 1414, 1707, 1982

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in March 2004, appear. Vacancies scheduled to appear from May 1, 2004, through July 31, 2004, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of April 12, 2004.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM MARCH 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
Alternative Livestock Advisory Council (Fish, Wildlife, and Parks)			
Ms. Rebecca Mesaros Cascade Qualifications (if required): representative of the alternative livestock industry	Governor	reappointed	3/11/2004 1/1/2006
Mr. Stanley Rauch Victor Qualifications (if required): sportsperson	Governor	reappointed	3/11/2004 1/1/2006
Dr. Deborah Yarborough Kalispell Qualifications (if required): veterinarian	Governor	Douglas	3/11/2004 1/1/2006
Board of Architects (Labor and Industry)			
Mr. John Fontaine Glasgow Qualifications (if required): public member	Governor	not listed	3/8/2004 3/27/2007
Mr. Tom Wood Bozeman Qualifications (if required): staff of the Montana State University-Bozeman School of Architecture	Governor	not listed	3/8/2004 3/27/2007
Board of Public Education (Education)			
Mr. Cal Gilbert Great Falls Qualifications (if required): representative of District 2 and an Independent	Governor	Silverthorne	3/4/2004 2/1/2011
Governor's Council on Worklife Wellness (Public Health and Human Services)			
Mr. Pete Shatwell Bozeman Qualifications (if required): representative of employee wellness	Governor	not listed	3/10/2004 12/1/2005

BOARD AND COUNCIL APPOINTEES FROM MARCH 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Abstinence Education Advisory Council (Public Health and Human Services)			
Mr. David Ames	Governor	not listed	3/10/2004
Helena			3/10/2006
Qualifications (if required): non-voting youth representative			
Sen. Sherm Anderson	Governor	not listed	3/10/2004
Deer Lodge			3/10/2006
Qualifications (if required): public member			
Mr. Matt Antonich	Governor	not listed	3/10/2004
Kremlin			3/10/2006
Qualifications (if required): public member			
Mr. Jim Good	Governor	not listed	3/10/2004
Bozeman			3/10/2006
Qualifications (if required): public member			
Dr. Ken Graham	Governor	not listed	3/10/2004
Butte			3/10/2006
Qualifications (if required): public member			
Mr. Brent Gyuricza	Governor	not listed	3/10/2004
Missoula			3/10/2006
Qualifications (if required): public member			
Mr. Chris Jones	Governor	not listed	3/10/2004
Missoula			3/10/2006
Qualifications (if required): public member			
Ms. Judy LaPan	Governor	not listed	3/10/2004
Sidney			3/10/2006
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont.			
Mr. Lance Lanning Billings Qualifications (if required): public member	Governor	not listed	3/10/2004 3/10/2006
Rep. Jeff Laszloffy Laurel Qualifications (if required): public member	Governor	not listed	3/10/2004 3/10/2006
Mr. Collins Lawlor Helena Qualifications (if required): non-voting youth representative	Governor	not listed	3/10/2004 3/10/2006
Mr. Joe Moerkerke Conrad Qualifications (if required): public member	Governor	not listed	3/10/2004 3/10/2006
Ms. Carrie Price Great Falls Qualifications (if required): public member	Governor	not listed	3/10/2004 3/10/2006
Dr. Tom Rasmussen Helena Qualifications (if required): public member	Governor	not listed	3/10/2004 3/10/2006
Ms. Terry Reeser Helena Qualifications (if required): non-voting youth representative	Governor	not listed	3/10/2004 3/10/2006
Mr. Bryce Skjervem Helena Qualifications (if required): public member	Governor	not listed	3/10/2004 3/10/2006

BOARD AND COUNCIL APPOINTEES FROM MARCH 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont.			
Ms. Joleen Spang	Governor	not listed	3/10/2004
Lame Deer			3/10/2006
Qualifications (if required): public member			
Ms. Jessie Stinger	Governor	not listed	3/10/2004
Polson			3/10/2006
Qualifications (if required): public member			
Mr. Gary Swant	Governor	not listed	3/10/2004
Deer Lodge			3/10/2006
Qualifications (if required): public member			
Ms. DeAnn Visser	Governor	not listed	3/10/2004
Billings			3/10/2006
Qualifications (if required): public member			
Montana Drought Advisory Commission (Natural Resources and Conservation)			
Mr. Ken Evans	Governor	Diemert	3/31/2004
Fort Benton			0/0/0
Qualifications (if required): non-voting representative of local government			
State 9-1-1 Advisory Council (Administration)			
Mr. Jim Anderson	Director	not listed	3/1/2004
Helena			3/1/2006
Qualifications (if required): Department of Military Affairs Disaster and Emergency Services Division			
Mr. Craig Bender	Director	not listed	3/1/2004
Great Falls			3/1/2006
Qualifications (if required): 3 Rivers Wireless			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
State 9-1-1 Advisory Council (Administration) cont.			
Mr. Richard Brumley	Director	not listed	3/1/2004
Lewistown			3/1/2006
Qualifications (if required): Montana Emergency Medical Services Association			
Mr. Joe Calnan	Director	not listed	3/1/2004
Montana City			3/1/2006
Qualifications (if required): Montana State Volunteer Fire Fighters Association			
Mr. Thom Danenhower	Director	not listed	3/1/2004
Helena			3/1/2006
Qualifications (if required): Department of Public Health and Human Services			
Mr. Geoff Feiss	Director	not listed	3/1/2004
Helena			3/1/2006
Qualifications (if required): Montana Telephone Association			
Ms. Aimee Grmolijez	Director	not listed	3/1/2004
Helena			3/1/2006
Qualifications (if required): Verizon Wireless			
Mr. Doug Kaercher	Director	not listed	3/1/2004
Havre			3/1/2006
Qualifications (if required): Montana Association of Counties			
Ms. Lisa Kelly	Director	not listed	3/1/2004
Kalispell			3/1/2006
Qualifications (if required): Century Tel			
Mr. Fred Leistiko	Director	not listed	3/1/2004
Kalispell			3/1/2006
Qualifications (if required): Montana League of Cities and Towns			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
State 9-1-1 Advisory Council (Administration) cont.			
Ms. Cheryl Liedle	Director	not listed	3/1/2004
Helena			3/1/2006
Qualifications (if required): Montana Sheriff's and Peace Officers Association			
Ms. Bonnie Lorang	Director	not listed	3/1/2004
Helena			3/1/2006
Qualifications (if required): Montana Independent Telecommunications Systems			
Ms. Margaret Morgan	Director	not listed	3/1/2004
Helena			3/1/2006
Qualifications (if required): Western Wireless			
Mr. Kevin Myhre	Director	not listed	3/1/2004
Lewistown			3/1/2006
Qualifications (if required): Montana Association of Chiefs of Police			
Ms. Wilma Puich	Director	not listed	3/1/2004
Butte			3/1/2006
Qualifications (if required): Association of Disaster and Emergency Services Coordinators			
Mr. Dave Rosencrans	Director	not listed	3/1/2004
Helena			3/1/2006
Qualifications (if required): Public Safety Answering Point representative			
Mr. Bill Rusche	Director	not listed	3/1/2004
Wolf Point			3/1/2006
Qualifications (if required): Association of Public Safety Communications Officials			
Mr. Larry Sheldon	Director	not listed	3/1/2004
Helena			3/1/2006
Qualifications (if required): Qwest Communications			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
State 9-1-1 Advisory Council (Administration) cont.			
Mr. Chuck Winn	Director	not listed	3/1/2004
Bozeman			3/1/2006
Qualifications (if required): Montana State Fire Chiefs Association			
Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council (Environmental Quality)			
Mr. Haley Beaudry	Governor	not listed	3/31/2004
Butte			12/31/2005
Qualifications (if required): representative from Silver Bow County and a voting member			
Mr. Matt Clifford	Governor	not listed	3/31/2004
Missoula			12/31/2005
Qualifications (if required): representative from Missoula County and a voting member			
Mr. Bud Clinch	Governor	not listed	3/31/2004
Helena			12/31/2005
Qualifications (if required): representative of the Department of Natural Resources and Conservation and a non-voting member			
Mr. James Dinsmore	Governor	not listed	3/31/2004
Hall			12/31/2005
Qualifications (if required): representative from Granite County and a voting member			
Mr. Jim Flynn	Governor	not listed	3/31/2004
Anaconda			12/31/2005
Qualifications (if required): representative from Deer Lodge County and a voting member			
Ms. Carol Fox	Governor	not listed	3/31/2004
Helena			12/31/2005
Qualifications (if required): representative of the Natural Resource Damage Program and a non-voting member			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council (Environmental Quality) cont.			
Mr. Jeff Hagener Helena	Governor	not listed	3/31/2004 12/31/2005
Qualifications (if required): representative of the Department of Fish, Wildlife, and Parks and a non-voting member			
Mr. Jerry Harrington Butte	Governor	not listed	3/31/2004 12/31/2005
Qualifications (if required): representative from Silver Bow County and a voting member			
Mr. John Hollenback Gold Creek	Governor	not listed	3/31/2004 12/31/2005
Qualifications (if required): representative from Powell County and a voting member			
Ms. Judy H. Jacobson Butte	Governor	not listed	3/31/2004 12/31/2005
Qualifications (if required): representative from Silver Bow County and a voting member			
Ms. Sally Johnson Missoula	Governor	not listed	3/31/2004 12/31/2005
Qualifications (if required): representative from Missoula County and a voting member			
Sen. Dale Mahlum Missoula	Governor	not listed	3/31/2004 12/31/2005
Qualifications (if required): representative from Missoula County and a voting member			
Ms. Jan Sensibaugh Helena	Governor	not listed	3/31/2004 12/31/2005
Qualifications (if required): representative of the Department of Environmental Quality and a non-voting member			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council (Environmental Quality) cont.			
Mr. Gene Vuckovich	Governor	not listed	3/31/2004
Anaconda			12/31/2005
Qualifications (if required): representative from Deer Lodge County and a voting member			
Mr. Jules Waber	Governor	not listed	3/31/2004
Deer Lodge			12/31/2005
Qualifications (if required): representative from Powell County and a voting member			

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Aging Advisory Council (Public Health and Human Services)		
Mr. Bud Clinch, Libby	Governor	7/18/2004
Qualifications (if required): public member		
Mr. Clayton Croff, Billings	Governor	7/18/2004
Qualifications (if required): public member		
Ms. Chuckie Cramer, Helena	Governor	7/18/2004
Qualifications (if required): public member		
Ms. Pat Ludwig, Chester	Governor	7/18/2004
Qualifications (if required): public member		
Board of Funeral Services (Commerce)		
Mr. David G. Fulkerson, Plentywood	Governor	7/1/2004
Qualifications (if required): licensed mortician		
Board of Hearing Aid Dispensers (Commerce)		
Mr. David E. King, Billings	Governor	7/1/2004
Qualifications (if required): nationally certified audiologist with a master's level college degree		
Board of Landscape Architects (Commerce)		
Mr. Stacey Robinson, Billings	Governor	7/1/2004
Qualifications (if required): landscape architect		
Board of Nursing (Commerce)		
Ms. Vickie Badgley, Stevensville	Governor	7/1/2004
Qualifications (if required): LPN		
Ms. Alma Gretchen McNeely, Bozeman	Governor	7/1/2004
Qualifications (if required): RN/educator		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Board of Nursing Home Administrators (Commerce)		
Mr. Fred Patten, Helena	Governor	5/28/2004
Qualifications (if required): public member over the age of 55		
Board of Pharmacy (Commerce)		
Mr. Albert A. (Tony) Fisher, Billings	Governor	7/1/2004
Qualifications (if required): licensed pharmacist		
Board of Physical Therapy Examiners (Labor and Industry)		
Mr. Bruce Lamb, Havre	Governor	7/1/2004
Qualifications (if required): physical therapist		
Board of Plumbers (Commerce)		
Mr. Kim Beaudry, Billings	Governor	5/4/2004
Qualifications (if required): professional engineer qualified in mechanical engineering		
Board of Public Accountants (Commerce)		
Mr. Patrick Hanley, Billings	Governor	7/1/2004
Qualifications (if required): certified public accountant		
Board of Real Estate Appraisers (Commerce)		
Mr. Tim Moore, Helena	Governor	5/1/2004
Qualifications (if required): real estate appraiser		
Ms. Jennifer Seitz, Billings	Governor	5/1/2004
Qualifications (if required): public member		
Board of Real Estate Appraisers (Labor and Industry)		
Mr. Keith O'Reilly, Bozeman	Governor	5/1/2004
Qualifications (if required): real estate appraiser		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Board of Realty Regulation (Commerce)		
Ms. Laura Odegaard, Billings	Governor	5/9/2004
Qualifications (if required): realtor		
Board of Regents (Education)		
Mr. Christian Hur, Missoula	Governor	7/1/2004
Qualifications (if required): student representative		
Board of Sanitarians (Commerce)		
Mr. Ted Kylander, Billings	Governor	7/1/2004
Qualifications (if required): sanitarian		
Board of Veterinary Medicine (Commerce)		
Dr. John Smith, Three Forks	Governor	7/31/2004
Qualifications (if required): licensed veterinarian		
Board of Water Well Contractors (Natural Resources and Conservation)		
Mr. Pat Byrne, Great Falls	Governor	7/1/2004
Qualifications (if required): water well contractor		
Commission on Community Service (Labor and Industry)		
Mr. Erik Burke, Helena	Governor	7/1/2004
Qualifications (if required): representing labor unions		
Ms. Wendy Keating, Helena	Governor	7/1/2004
Qualifications (if required): representative of the Department of Labor and Industry		
Ms. Erin Butts, Bigfork	Governor	7/1/2004
Qualifications (if required): representing youth		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Committee on Telecommunications Access Services for Persons with Disabilities (Public Health and Human Services)		
Mr. Ben Havdahl, Helena	Governor	7/1/2004
Qualifications (if required): hard of hearing		
Mr. Ron Bibler, Great Falls	Governor	7/1/2004
Qualifications (if required): disabled		
Mr. Joe Mathews, Helena	Governor	7/1/2004
Qualifications (if required): representative of Department of Public Health and Human Services		
Ms. Chris Huth, Helena	Governor	7/1/2004
Qualifications (if required): non-disabled businessperson		
Mr. Jeff Brandt, Helena	Governor	7/1/2004
Qualifications (if required): representative of the Department of Administration		
District Court Council (Supreme Court)		
Judge Thomas M. McKittrick, Great Falls	elected	6/30/2004
Qualifications (if required): none specified		
Mr. Glen Welch	Supreme Court	6/30/2004
Qualifications (if required): nonvoting member		
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs)		
Mr. Tom Handl, Miles City	Director	6/1/2004
Qualifications (if required): Veterans of Foreign Wars		
Mr. Tony Harbaugh, Miles City	Director	6/1/2004
Qualifications (if required): Custer County Sheriff		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) cont.		
Mr. James F. Jacobsen, Helena	Director	6/1/2004
Qualifications (if required): none specified		
Mr. Henry "Bill" Hopkins, Ismay	Director	6/1/2004
Qualifications (if required): Disabled American Veterans		
Ms. Betty Hopkins, Ismay	Director	6/1/2004
Qualifications (if required): Disabled American Veterans Auxiliary		
Mr. Bob Beals, Forsyth	Director	6/1/2004
Qualifications (if required): American Legion		
Ms. Linda Dolatta, Terry	Director	6/1/2004
Qualifications (if required): American Legion Auxiliary		
Mr. Bill Dolatta, Terry	Director	6/1/2004
Qualifications (if required): Vietnam Veterans of America		
Mr. Jim Bertrand, Miles City	Director	6/1/2004
Qualifications (if required): Veterans of Foreign Wars		
Mr. Stanley Watson, Forsyth	Director	6/1/2004
Qualifications (if required): Marine Corps League		
Mr. Victor Leikam, Billings	Director	6/1/2004
Qualifications (if required): 40 & 8		
Mr. Frank Stoltz, Miles City	Director	6/1/2004
Qualifications (if required): Prisoners of War		
Mr. Frederick S. Rambur, Miles City	Director	6/1/2004
Qualifications (if required): Department of Military Affairs		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) cont.		
Mr. Tom Frank, Miles City	Director	6/1/2004
Qualifications (if required): Custer County sheriff/coroner alternate		
Mr. Joe Stevenson, Miles City	Director	6/1/2004
Qualifications (if required): Custer County Commissioner		
Ms. Edith Pawlowski, Circle	Director	6/1/2004
Qualifications (if required): Veterans of Foreign Wars Auxiliary		
Mr. Alexander Russell, Melstone	Director	6/1/2004
Qualifications (if required): Military Order of the Purple Heart		
Mr. David Peterson, Billings	Director	6/1/2004
Qualifications (if required): Disabled American Veterans		
Mr. Tom Handl, Miles City	Director	6/1/2004
Qualifications (if required): Military Order of the Cooties		
Ms. Myrtle Meissner, Circle	Director	6/1/2004
Qualifications (if required): Veterans of Foreign Wars Auxiliary		
Ms. Sylvia Beals, Forsyth	Director	6/1/2004
Qualifications (if required): American Legion alternate		
Ms. Donna Dukart, Miles City	Director	6/1/2004
Qualifications (if required): American Legion Auxiliary alternate		
Mr. John S. Salazar, Miles City	Director	6/1/2004
Qualifications (if required): Department of Military Affairs alternate		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Economic Development Advisory Council (Commerce)		
Mr. Paul Tuss, Havre Qualifications (if required): public member	Governor	7/23/2004
Mr. Evan Barrett, Butte Qualifications (if required): public member	Governor	7/23/2004
Mr. Tony Rudbach, Missoula Qualifications (if required): public member	Governor	7/23/2004
Ms. Elaina Zempel, Conrad Qualifications (if required): public member	Governor	7/23/2004
Ms. Anita Varone, Helena Qualifications (if required): public member	Governor	7/23/2004
Family Education Savings Program Oversight Committee (Commissioner of Higher Education)		
Mr. Pat Ellis, Bozeman Qualifications (if required): public member	Governor	7/1/2004
Mr. Scott Darkenwald, Helena Qualifications (if required): State Treasurer	Governor	7/1/2004
Governor's Energy Consumer Protection Task Force (Governor's Office)		
Sen. Chuck Swysgood, Helena Qualifications (if required): public member	Governor	7/30/2004
Mr. Haley Beaudry, Butte Qualifications (if required): public member	Governor	7/30/2004
Mr. Bob Rowe, Missoula Qualifications (if required): public member	Governor	7/30/2004

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Governor's Energy Consumer Protection Task Force (Governor's Office) cont.		
Mr. John Hines, Helena	Governor	7/30/2004
Qualifications (if required): public member		
Rep. Alan Olson, Roundup	Governor	7/30/2004
Qualifications (if required): public member		
Mr. John Alke, Helena	Governor	7/30/2004
Qualifications (if required): public member		
Mr. Bill Drummond, Missoula	Governor	7/30/2004
Qualifications (if required): public member		
Mr. Thomas Power, Missoula	Governor	7/30/2004
Qualifications (if required): public member		
Mr. Michael Uda, Helena	Governor	7/30/2004
Qualifications (if required): public member		
Mr. David Wheelihan, Great Falls	Governor	7/30/2004
Qualifications (if required): public member		
Historical Society Board of Trustees (Historical Society)		
Ms. Lee Rostad, Martinsdale	Governor	7/1/2004
Qualifications (if required): public member		
Mr. Ed Heinrich, Fairmont	Governor	7/1/2004
Qualifications (if required): public member		
Mr. James Utterback, Helena	Governor	7/1/2004
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Mental Disabilities Board of Visitors (Governor)		
Ms. Joan-Nell Macfadden, Great Falls	Governor	7/1/2004
Qualifications (if required): experienced with emotionally disturbed children		
Mr. Graydon Davies Moll, Polson	Governor	7/1/2004
Qualifications (if required): experienced with developmentally disabled adults		
Mr. Steve Cahill, Clancy	Governor	7/1/2004
Qualifications (if required): experienced with the welfare of the mentally ill		
Microbusiness Advisory Council (Commerce)		
Mr. Robert J. Jahner, Clancy	Governor	6/30/2004
Qualifications (if required): representing Congressional District 1 and an expert on self employment		
Ms. Andrea Main, Billings	Governor	6/30/2004
Qualifications (if required): representing Congressional District 2 and minorities		
Mr. Pat McDermott, Ramsay	Governor	6/30/2004
Qualifications (if required): representing Congressional District 1 and cities over 15,000		
Ms. Jenna Caplette, Bozeman	Governor	6/30/2004
Qualifications (if required): representing Congressional District 1 and cities over 15,000		
Ms. Denise Jordan, Billings	Governor	6/30/2004
Qualifications (if required): representing Congressional District 2		
Ms. Nancy Arnold, Missoula	Governor	6/30/2004
Qualifications (if required): representing Congressional District 1 and an expert on self employment		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Montana Agriculture Development Council (Agriculture)		
Mr. Larry Barber, Coffee Creek	Governor	7/1/2004
Qualifications (if required): actively engaged in agriculture		
Mr. John L. Franklin, Sidney	Governor	7/1/2004
Qualifications (if required): actively engaged in agriculture		
Montana Cooperative Development Center Advisory Council (Agriculture)		
Mr. Greg Jergeson, Chinook	Director	7/1/2004
Qualifications (if required): member-at-large		
Mr. Steve Pilcher, Helena	Director	7/1/2004
Qualifications (if required): Montana Stockgrowers Association		
Mr. Paul Tuss, Havre	Director	7/1/2004
Qualifications (if required): Montana Economic Developers Association		
Mr. Arthur Kleinjan, Chinook	Director	7/1/2004
Qualifications (if required): Montana Association of Counties		
Mr. Geoff Feiss, Helena	Director	7/1/2004
Qualifications (if required): Montana Telecommunications Association		
Mr. Rich Owen, Geraldine	Director	7/1/2004
Qualifications (if required): Cenex Harvest States Cooperative		
Mr. Walter Coffman, Dutton	Director	7/1/2004
Qualifications (if required): Montana Council of Cooperatives		
Mr. Scott Morrison, Helena	Director	7/1/2004
Qualifications (if required): Montana Credit Union Network		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Montana Cooperative Development Center Advisory Council (Agriculture) cont.		
Mr. Mack McConnell, Great Falls	Director	7/1/2004
Qualifications (if required): Montana Electric Cooperatives Association		
Mr. Greg Woods, Bozeman	Director	7/1/2004
Qualifications (if required): Montana Farm Bureau/Montana Grain Growers		
Mr. Brooks Dailey, Great Falls	Director	7/1/2004
Qualifications (if required): Montana Farmers Union		
Mr. Mike Strand, Great Falls	Director	7/1/2004
Qualifications (if required): Montana Independent Telecommunications Systems		
Ms. Mary Ann Murray, Jordan	Director	7/1/2004
Qualifications (if required): Montana WIFE		
Montana Heritage Preservation and Development Commission (Historical Society)		
Mr. Pat Keim, Helena	Governor	5/23/2004
Qualifications (if required): public member		
Ms. Judy McNally, Billings	Governor	5/23/2004
Qualifications (if required): public member		
Mr. John Lawton, Great Falls	Governor	5/23/2004
Qualifications (if required): experienced in community planning		
Ms. Rosana Skelton, Helena	Governor	5/23/2004
Qualifications (if required): businessperson		
Montana Mint Committee (Agriculture)		
Mr. David Tutvedt, Kalispell	Governor	7/1/2004
Qualifications (if required): mint grower		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Montana Organic Commodity Advisory Council (Agriculture)		
Ms. Nancy Matheson, Helena	Director	7/29/2004
Qualifications (if required): producer		
Mr. John Hoffland, Helena	Director	7/29/2004
Qualifications (if required): consumer		
Mr. Mikel Lund, Scobey	Director	7/29/2004
Qualifications (if required): producer		
Montana Potato Advisory Committee (Agriculture)		
Rep. Donald Steinbeisser, Sidney	Director	5/20/2004
Qualifications (if required): none specified		
Mr. John Venhuizen, Manhattan	Director	5/20/2004
Qualifications (if required): none specified		
Montana Power Authority (Natural Resources and Conservation)		
Mr. Gary Buchanan, Billings	Governor	7/2/2004
Qualifications (if required): member at large with experience in financial, banking and bonding		
Ms. Kathy Ogren, Missoula	Governor	7/2/2004
Qualifications (if required): representing commercial and industrial enterprise energy consumption		
Mr. Steve Browning, Helena	Governor	7/2/2004
Qualifications (if required): public member		
Montana Special Education Advisory Panel (Office of Public Instruction)		
Mr. Bob Maffit, Helena	Superintendent	6/30/2004
Qualifications (if required): state agency		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Montana Special Education Advisory Panel (Office of Public Instruction) cont.		
Ms. Gwen Beyer, Missoula	Superintendent	6/30/2004
Qualifications (if required): Part C/IDEA representative		
Rep. Holly Raser, Missoula	Superintendent	6/30/2004
Qualifications (if required): legislator		
Ms. Patrice MacDonald, Wolf Point	Superintendent	6/30/2004
Qualifications (if required): regular classroom teacher		
Ms. Karla Wohlwend, Havre	Superintendent	6/30/2004
Qualifications (if required): special education program administrator		
Ms. Judith Herzog, Billings	Superintendent	6/30/2004
Qualifications (if required): business concerned with transitions		
Mr. Russ Bean, Augusta	Superintendent	6/30/2004
Qualifications (if required): state/local administrator		
Mr. Steve Gibson, Helena	Superintendent	6/30/2004
Qualifications (if required): representative from juvenile and adult corrections		
Mr. Jeff Stelloh, Billings	Superintendent	6/30/2004
Qualifications (if required): private school representative		
Mr. Gary Perleberg, Bigfork	Superintendent	6/30/2004
Qualifications (if required): parent of a child with disabilities		
Ms. Norma Wadsworth, Billings	Superintendent	6/30/2004
Qualifications (if required): higher education		
Ms. WyAnn Northrop, Missoula	Superintendent	6/30/2004
Qualifications (if required): teacher of children with disabilities		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Montana Special Education Advisory Panel (Office of Public Instruction) cont.		
Ms. Hanna Fries, East Helena	Superintendent	6/30/2004
Qualifications (if required): student		
Montana Vocational Rehabilitation Council (Public Health and Human Services)		
Ms. Myrle Tompkins, Helena	Director	6/17/2004
Qualifications (if required): none specified		
Petroleum Tank Release Compensation Board (Environmental Quality)		
Mr. Gary Basso, Billings	Governor	6/30/2004
Qualifications (if required): representative of the insurance industry		
Mr. Joseph Murphy, Great Falls	Governor	6/30/2004
Qualifications (if required): petroleum services industry consultant		
Mr. Greg Cross, Billings	Governor	6/30/2004
Qualifications (if required): representative of independent petroleum markets		
Public Safety Communications Council (Administration)		
Mr. Dwight MacKay, Billings	Governor	6/18/2004
Qualifications (if required): representative of a federal agency		
Mr. John Blacker, Helena	Governor	6/18/2004
Qualifications (if required): representative of state government		
Mr. Larry Fasbender, Helena	Governor	6/18/2004
Qualifications (if required): designee of the Attorney General		
Mr. William Jameson, Bozeman	Governor	6/18/2004
Qualifications (if required): representative of citizens at large		
Mr. Gary Fjelstad, Forsyth	Governor	6/18/2004
Qualifications (if required): representative of county government		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Public Safety Communications Council (Administration) cont.		
Mr. Geoff Feiss, Helena	Governor	6/18/2004
Qualifications (if required): representative of utilities		
Mr. Chuck Winn, Bozeman	Governor	6/18/2004
Qualifications (if required): representative of fire protection services		
Mr. Brian Wolf, Helena	Governor	6/18/2004
Qualifications (if required): designee of the Director of the Department of Administration		
Mr. Tim Burton, Helena	Governor	6/18/2004
Qualifications (if required): representative of local government		
Mr. Doug King, Billings	Governor	6/18/2004
Qualifications (if required): representative of federal government		
Mr. Stan Putnam, Helena	Governor	6/18/2004
Qualifications (if required): representative of state government		
Mr. Kevin Olson, Havre	Governor	6/18/2004
Qualifications (if required): representative of law enforcement and Montana Association of Chiefs of Police		
Mr. Chuck Maxwell, Billings	Governor	6/18/2004
Qualifications (if required): representative of law enforcement and the Sheriffs and Peace Officers Association		
Mr. Ken Mergenthaler, East Helena	Governor	6/18/2004
Qualifications (if required): representative of volunteer fire protection services		
Ms. Jane Ellis, Missoula	Governor	6/18/2004
Qualifications (if required): representative of the 9-1-1 community		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Public Safety Communications Council (Administration) cont.		
Mr. Larry Wetsit, Scobey	Governor	6/18/2004
Qualifications (if required): representative of the tribes		
Mr. Ken Leighton-Boster, Helena	Governor	6/18/2004
Qualifications (if required): representative of emergency medical services and a state agency		
State Banking Board (Governor)		
Ms. Jamie Doggett, White Sulphur Springs	Governor	7/1/2004
Qualifications (if required): public member		
State Electrical Board (Commerce)		
Mr. Ron Van Diest, East Helena	Governor	7/1/2004
Qualifications (if required): licensed electrician		
State Library Commission (State Library)		
Ms. Caroline Bitz, Box Elder	Governor	5/22/2004
Qualifications (if required): public member		
State Tribal Economic Development Commission (Governor)		
Mr. Noel Sansaver, Poplar	Governor	6/30/2004
Qualifications (if required): representative of the Fort Peck Tribes		
Mr. Andy Poole, Helena	Governor	6/30/2004
Qualifications (if required): representing the Department of Commerce		
Ms. Marilyn Parsons, Browning	Governor	6/30/2004
Qualifications (if required): representing the Blackfeet Tribe		
Mr. Mark Sansover, Poplar	Governor	6/30/2004
Qualifications (if required): representing the Fort Peck Tribe		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2004 through JULY 31, 2004

Board/current position holder	Appointed by	Term end
Teachers' Retirement Board (Administration)		
Mr. Tim Ryan, Great Falls	Governor	7/1/2004
Qualifications (if required): public member		
Tourism Advisory Council (Commerce)		
Ms. Maureen Averill, Bigfork	Governor	7/1/2004
Qualifications (if required): representing Glacier Country		
Ms. Debbie Donovan, Larslan	Governor	7/1/2004
Qualifications (if required): representing Missouri River Country		
Ms. Kathy Brown, Helena	Governor	7/1/2004
Qualifications (if required): representing Gold West Country		
Mr. Homer Staves, Billings	Governor	7/1/2004
Qualifications (if required): representative of Custer Country		
Ms. Sharon Rau, Sidney	Governor	7/1/2004
Qualifications (if required): representing Missouri River Country		
Western Interstate Commission on Higher Education (Commissioner of Higher Education)		
Dr. Francis J. Kerins, Helena	Governor	6/19/2004
Qualifications (if required): public member		