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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the end of each register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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NOTICE SECTION

BEFORE THE COMMUNITY DEVELOPMENT DIVISION
AND THE BUSINESS RESOURCES DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of a new rule pertaining to the administration of the 2005-2006 Federal Community Development Block Grant (CDBG) Program	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On February 8, 2005, at 1:30 p.m., a public hearing will be held in Room 226 at the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the adoption of a new rule pertaining to the administration of the 2005-2006 Federal Community Development Block Grant (CDBG) Program.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you wish to request an accommodation, contact the Community Development Division no later than 5:00 p.m. on February 1, 2005, to advise the Division of the nature of the accommodation that you need. Please contact Gus Byrom, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2777; Montana Relay 1-800-253-4091; TDD (406) 841-2702; facsimile (406) 841-2771, e-mail to gbyrom@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2005-2006 CDBG PROGRAM (1) The department of commerce adopts and incorporates by reference each of the following, published by it as rules for the administration of the CDBG program:

(a) the Montana Community Development Block Grant Program 2006 Application Guidelines for Housing and Public Facilities Projects;

(b) the Montana Community Development Block Grant Program 2005 Application Guidelines for Housing and Public Facilities Planning Grants;

(c) the 2005 Application Guidelines for the Community Development Block Grant Economic Development Program;

(d) the Montana Community Development Block Grant Economic Development Program 2005 Application Guidelines for Planning Projects; and

(e) the Montana Community Development Block Grant Program 2005-2006 Grant Administration Manual.

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

(a) policies governing the program;
(b) requirements for applicants;
(c) procedures for evaluating applications;
(d) procedures for local project start up;
(e) environmental review of project activities;
(f) procurement of goods and services;
(g) financial management;
(h) protection of civil rights;
(i) fair labor standards;
(j) acquisition of property and relocation of persons displaced thereby;
(k) administrative considerations specific to public facilities, housing and neighborhood renewal and economic development projects;
(l) project audits;
(m) public relations;
(n) project monitoring; and
(o) planning assistance.

(3) Copies of the rules adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523 or from the Department of Commerce, Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505.

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

REASON: It is reasonably necessary to adopt this new rule because the federal regulations governing the state's administration of the 2005-2006 CDBG program and 90-1-103, MCA, require the Department to adopt rules to implement the program. Local government entities must have these application guidelines before the entities may apply to the Department for financial assistance under the CDBG program. The Application Guidelines describe the federal and state requirements with which local governments must comply in order to apply for CDBG funds. The Grant Administration Manual is primarily a restatement and explanation of existing federal and state statutory and regulatory requirements, as well as additional departmental requirements, with which local CDBG recipients must comply in administering their CDBG projects. The Manual includes sample forms and letters, checklists, and explanatory text to help local government officials comply with the variety of requirements that apply to economic development, housing, and public facility projects.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523, by facsimile to (406)

841-2771; or to the Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505, by facsimile (406) 841-2731, to be received no later than 5:00 p.m., February 15, 2005.

5. Gus Byrom has been designated to preside over and conduct this hearing.

6. The Community Development Division maintains a list of interested persons who wish to receive notices of rulemaking actions relating to the CDBG program. Persons who wish to have their name added to this list may make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all CDBG administrative rulemaking proceedings. The request may be mailed or delivered to the Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523 or by facsimile to (406) 841-2771, or by completing a request form at any rules hearing held by the agency.

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

COMMUNITY DEVELOPMENT DIVISION
BUSINESS RESOURCES DIVISION
DEPARTMENT OF COMMERCE

By: /s/ ANTHONY PREITE
ANTHONY PREITE, DIRECTOR
DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State, January 3, 2005.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through XVI, pertaining to Blackfoot River Special Recreation Permit Program	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) will hold public hearings to consider the adoption of new rules regarding special recreation permits on the Blackfoot River. The hearing dates and places are as follows:

February 2, 2005, 6:30 p.m.
Lincoln Community Hall
Lincoln, Montana

February 3, 2005, 6:30 p.m.
Ruby's Reserve Street Inn
4825 North Reserve Street
Missoula, Montana

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on January 21, 2005, to advise us of the nature of the accommodation that you need. Please contact Charlie Sperry, Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, MT 59620-0701; telephone (406) 444-3888; fax (406) 444-7456; email csperry@state.mt.us.

3. The proposed new rules provide as follows:

NEW RULE I PURPOSE OF THE BLACKFOOT SPECIAL RECREATION PERMIT RULES (1) The purpose of this subchapter is to establish a special recreation permit program for commercial use, competitive events, and organized group activities occurring on the Blackfoot River or lands adjacent to the Blackfoot River that are owned or managed by the department.

(2) The purpose of the special recreation permit program is to ensure that commercial use, competitive events, and organized group activities are compatible with the general recreating public and are consistent with the natural resource management objectives for the river and lands adjacent to the river that are owned or managed by the department.

(3) The special recreation permit program is designed to be consistent with the bureau of land management special recreation permit program in order to provide permittees a streamlined and efficient permitting process.

(4) The statewide rules governing river recreation management shall apply to future recreation management actions on the Blackfoot River.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE II SPECIAL RECREATION PERMIT DEFINITIONS

(1) "Commercial use" means recreational use of public lands and related waters for business or financial gain and includes any person, group or organization, including nonprofit organizations and academic institutions that make or attempt to make a profit, vend a service or product, receive money, amortize equipment, or obtain goods or services as compensation from participants in recreational activities occurring on lands or related waters that are owned or managed by the department.

(2) "Competitive event" means any organized, sanctioned, or structured use, event, or activity on public land or related waters in which two or more contestants compete, the participants register, enter, or complete an application for the event, and/or a predetermined course or area is designated.

(3) "Organized group activity" means a structured, ordered, consolidated, or scheduled event on, or occupation of, public lands or related waters that is not commercial or competitive.

(4) "Vending" means the sale of goods or services, not from a permanent structure, associated with recreation on the public lands or related waters, including but not limited to food, beverages, clothing, firewood, souvenirs, photographs or film (video or still) or equipment repairs.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE III APPLICABILITY (1) This subchapter applies to:

(a) all legally accessible portions of the Blackfoot River from its headwaters to its confluence with the Clark Fork River near Bonner, Montana;

(b) the North Fork of the Blackfoot River downstream from the United States forest service boundary to the river's confluence with the main stem of the Blackfoot River; and

(c) lands adjacent to the Blackfoot River and the North Fork of the Blackfoot River that are owned or managed by the department.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE IV WHEN A SPECIAL RECREATION PERMIT IS REQUIRED

(1) Except as provided in [NEW RULE V], special recreation permits must be obtained for:

(a) commercial use;
(b) a competitive event; or
(c) an organized group activity.

(2) The special recreation permit implemented by this subchapter is issued in lieu of a special use permit provided for under the Montana Fish, Wildlife and Parks, State Parks System Biennial Fee Rule for group use.

(3) A special recreation permit may be requested for a day, season of use, or other time period, up to a maximum of five years. The department will determine the appropriate term on a case-by-case basis.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE V BLACKFOOT RIVER PERMIT WAIVERS (1) The department may waive the requirement to obtain a special recreation permit for a competitive event or organized group activity if the event or activity:

(a) is not commercial;
(b) does not award cash prizes;
(c) is not publicly advertised;
(d) poses no appreciable risk for damage to public land or related water resource values;
(e) requires no specific management or monitoring;
(f) is consistent with the recreation management guidelines in the department's Blackfoot River Recreation Management Direction; and
(g) poses no appreciable risk to public health and safety.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE VI SPECIAL RECREATION PERMITS AND HUNTING, TRAPPING AND FISHING LICENSES (1) Persons holding a valid department license do not need a special recreation permit to hunt, fish or trap. Persons hunting, fishing, or trapping shall comply with hunting, fishing and trapping license requirements. Special recreation permits do not alone authorize hunting, fishing, and trapping.

(2) Outfitters and guides providing services to hunters, trappers, or anglers shall obtain special recreation permits from the department.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE VII APPLYING FOR SPECIAL RECREATION PERMITS

(1) All persons sponsoring or conducting commercial uses and competitive events requiring a special recreation permit should apply to the department at least 60 days before the use is intended to begin in order for the department to process the application and determine whether environmental analysis

is required. The department shall attempt to process applications received less than 60 days before the use is intended to begin on a case-by-case basis. The department shall inform applicants of the status of their application within 30 days after the filing date of the application. The department may require more than 60 days to process an application if the proposed use or event requires significant environmental analysis.

(2) All persons sponsoring or conducting an organized group activity should contact the department at least 30 days before the activity is intended to begin. The department shall attempt to process applications received less than 30 days before the use is intended to begin on a case-by-case basis. The department shall inform applicants of the status of their application within 14 days after the filing of the application. The department may require more than 30 days to process an application if the proposed activity requires significant environmental analysis.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE VIII SPECIAL RECREATION PERMIT: REQUIRED APPLICATION INFORMATION (1) An application for a special recreation permit must include:

(a) a completed special recreation application and permit form; and

(b) other relevant information in sufficient detail to allow the department to evaluate the nature and impact of the proposed activity, including measures the applicant will use to mitigate adverse impacts.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE IX PERMITTING DECISIONS (1) The department has discretion over whether to issue a special recreation permit. Permitting decisions are based on the following factors to the extent that they are relevant:

(a) conformance with laws, rules, recreation management plans, and land use plans;

(b) public safety;

(c) conflicts with other users;

(d) resource protection;

(e) the public interest served;

(f) whether in the past the applicant complied with the terms of his/her permit or other authorization from the department and other agencies; and

(g) such other information that the department finds appropriate.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE X BLACKFOOT RIVER SPECIAL RECREATION PERMIT FEES (1) The department shall require payment of fees for commercial use, competitive events, and organized group activities requiring a special recreation permit that occur on, or originate or terminate on lands adjacent to the Blackfoot River that are owned or managed by the department, except as provided in (2).

(2) The department may waive special recreation permit fees on a case-by-case basis for noncommercial use for organized group activities that are for educational purposes, accredited academic, scientific, and research institutions, therapeutic, providing a public service, or administrative uses.

(3) Fees pursuant to this rule shall be established through the department's biennial fee rule process.

(4) The department may adjust the fees as necessary to reflect changes in costs and the market and to ensure consistency with the special recreation permit fees established by the bureau of land management.

(5) The department may charge a fee for recovery of costs associated with significant environmental analysis when processing a permit application.

(6) Applicants must pay the required fees before the department authorizes special recreation permit use and by the deadlines that the department shall establish in each case. The department may not process or continue processing applications until the required fees or installments are paid.

AUTH: 23-1-105, 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE XI WHEN FEES ARE REFUNDABLE (1) For multi-year commercial permits, if the permittee's actual fees due are less that the estimated fees that the permittee paid in advance, the department shall credit overpayments to the following year or season. For other permits, the department shall provide the option of receiving a refund or crediting overpayments to future permits.

(2) Application fees and minimum annual commercial use fees are not refundable.

AUTH: 23-1-105, 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE XII SPECIAL RECREATION PERMIT STIPULATIONS

(1) The department shall establish stipulations that must be complied with in order to receive and/or retain a special recreation permit.

(2) The department shall require commercial users, except vendors, to obtain a professional liability insurance policy covering property damage and personal injury that the

department judges sufficient to protect the public, the state of Montana, and the federal government.

(3) The department may require insurance for competitive events, vendors or organized group activities if the department determines that the proposed activity may cause appreciable environmental degradation or risk to human safety or health.

(4) The department shall require permittees to report their use of the Blackfoot River and lands adjacent to the Blackfoot River that are owned or managed by the department. The department shall include specific reporting requirements as permit stipulations.

(5) The department may require an applicant to submit a payment bond or other financial guarantee if the department determines that the proposed use, activity or event might cause appreciable environmental degradation or risk to human health and safety.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE XIII PERMIT RENEWALS (1) The department may renew a special recreation permit upon application at the end of its term only if:

(a) the permit is in good standing;

(b) the permitted activity is consistent with management plans and policies that apply to the Blackfoot River and lands adjacent to the Blackfoot River that are owned or managed by the department; and

(c) the permittee and his/her affiliates have a satisfactory record of performance.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE XIV PERMIT TRANSFERS (1) The department may transfer a commercial special recreation permit only in the case of an actual sale of a business or a substantial part of a business. Only the department can approve the transfer or assignment of permit privileges to another person or entity.

(2) The person or entity seeking to acquire the commercial special recreation permit must complete the standard permit application process as provided for in [NEW RULES VII and VIII].

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE XV AMENDMENT, SUSPENSION, OR CANCELLATION OF A SPECIAL RECREATION PERMIT (1) The department may amend, suspend, or cancel a special recreation permit if necessary to protect public health, public safety, or the environment.

(2) The department may suspend or cancel a special recreation permit if the permittee violates or fails to comply

with a permit stipulation or is convicted of violating a federal or state law or regulation concerning the conservation or protection of natural resources, the environment, endangered species, or antiquities.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

NEW RULE XVI SPECIAL RECREATION PERMIT APPEAL PROCESS

(1) A person who has been denied a special recreation use permit or denied renewal of a special recreation permit, or a person whose special recreation permit has been suspended or cancelled may appeal the permitting decision in writing to the director within 30 days of the date of mailing of the notice of the permitting decision. Persons not appealing within 30 days have waived their right to appeal.

(2) The director or the director's designee shall issue a written decision on the appeal. The director's decision is final.

AUTH: 23-1-106, 23-2-103, 87-1-301, 87-1-303, MCA
IMP: 23-1-106, 87-1-301, 87-1-303, MCA

4. The Blackfoot River, popularized by the 1994 movie "A River Runs Through It," experienced an increase in recreational use in the mid-1990s. The increase in use was due in part to the improvement of the fisheries and the river's proximity to a rapidly growing human population in Western Montana. As the river became more popular with recreationists, the department began to receive complaints about crowded conditions in certain reaches of the river. Some river users expressed concerns about the quality of the experience and impacts on natural resources and public facilities. The department also heard from private landowners along the river concerned about recreationists trespassing and littering.

To address these concerns the Department of Fish, Wildlife and Parks (department) initiated a river recreation management planning process in 1995. After a public scoping process to pinpoint the major areas of concern, the department assembled a panel of technical experts from the Department of Natural Resources and Conservation, the Bureau of Land Management (BLM), the Forest Service, and Plum Creek Timber Company. Next, a citizen advisory committee, comprised of different interest groups, was appointed to work with the technical experts in creating a management plan for the Blackfoot River. The department held public meetings and evaluated public comment. The management plan, which was completed in 2000, was called the Blackfoot Management Direction.

The Blackfoot Management Direction established recreation settings, opportunities and guidelines for seven reaches of the river. This included guidelines on the types, amounts,

and characteristics of use that are appropriate for each reach of the river. It also directed the agency to establish the Blackfoot Recreation Steering Committee which is made up of private landowners, commercial fishing and boating outfitters, community members, anglers, and general recreationists who make recommendations to the department for improving management of recreation throughout the river corridor.

In 2002, BLM informed the department that BLM was required under 43 Code of Federal Regulations, Part 2930, to require a special recreation permit for commercial use, competitive events, and organized group activities occurring on BLM lands along the river. Commercial use, competitive events, and organized group activities occur at varying levels in each reach of the Blackfoot River. There is a need to better manage these types of recreational activities to ensure that they are compatible with other types of recreation occurring on or along the river, that they are not harmful to natural, cultural or recreation resources on or along the river, and that they provide for the health and safety of the participants.

The department and BLM both own land along the Blackfoot River, and the department manages BLM's lands along the river under a cooperative management agreement. BLM and the department agreed to coordinate their efforts to uniformly manage both department and BLM lands along the river. The objective of uniform management was to avoid confusing the public, which recreates on both department and BLM owned lands. The public could be confused if it encountered two different sets of regulations and two different kinds of management on one river. These proposed rules would enable the department to establish one permit system that is consistent with federal regulations and that applies to the river and department lands and BLM lands which the department manages pursuant to the cooperative agreement. This "one-stop-shopping" approach to government would provide a better service to the public and result in added coordination between the two managing agencies.

Another factor coloring this rulemaking process is the timing and adoption of the statewide river recreation process rules, ARM 12.11.401 through 12.11.455, in October of 2004. These rules are a set of statewide rules that provide direction for addressing social conflicts on rivers around the state. BLM agreed to delay implementing its plans for a special recreation permit program on the Blackfoot River so that the department could complete its statewide river recreation process rules. The Recreation Steering Committee was already in place, however, and thus the two agencies agreed to assign the committee the task of developing recommendations for group sizes and other criteria for administering the permit program. Although the committee for the Blackfoot River conducted its work prior to the adoption of the statewide rules, the process

the committee used to develop its recommendations was consistent with the process identified in the statewide rules. Furthermore, the process used to develop these rules is consistent with and reflects the principles outlined in the statewide river recreation process rules.

These rules establish a special recreation permit system that would enable the department to manage commercial, competitive, and organized groups recreating on or along the river.

The primary purpose of the proposed rules is to enable the department and commission to implement the recommendations of the Blackfoot River Recreation Steering Committee in cooperation with BLM in order to meet objectives established in the Blackfoot River Recreation Management Direction. In addition, since BLM is required to have a special recreation permit program and the department manages BLM lands along the Blackfoot River, these rules would allow implementation of a uniform special recreation permit program on the Blackfoot River and on lands owned or managed by the department on the Blackfoot River.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Charlie Sperry, Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, MT; telephone (406) 444-3888; fax (406) 444-7456; or email at csperry@state.mt.us and must be received no later than February 11, 2005.

6. Charlie Sperry, or another hearing officer appointed by the department, has been designated to preside over and conduct the hearings.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department or commission. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made be completing the request form at any rules hearing held by the department.

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

/s/ M. Jeff Hagener
M. Jeff Hagener, Secretary
Fish, Wildlife and Parks
Commission

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

Certified to the Secretary of State January 3, 2005

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.53.102, 17.53.105, 17.53.107, 17.53.208, 17.53.212, 17.53.213, 17.53.301, 17.53.401, 17.53.502, 17.53.602, 17.53.702, 17.53.708, 17.53.802, 17.53.803, 17.53.902, 17.53.1002, 17.53.1102, 17.53.1202, and 17.53.1302, the adoption of NEW RULES I through III, and the repeal of ARM 17.53.106 pertaining to authorization of the hazardous waste program	)))))))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION AND REPEAL (HAZARDOUS WASTE)

TO: All Concerned Persons

1. On March 3, 2005, at 10:30 a.m., a public hearing will be held in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., February 21, 2005, to advise us of the nature of the accommodation that you need. Please contact Robert Martin, Air and Waste Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1499; or email rmartin@mt.gov.

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

17.53.102 SCOPE OF RULES (1) and (2) remain the same.

(3) Injection wells ~~that dispose of hazardous waste are not subject to the permitting requirements of this chapter but may be subject to regulation by the EPA.~~ are subject to the following requirements:

(a) ~~Injection~~ injection wells that are used to dispose of hazardous waste are not regulated under the Montana hazardous waste program, but are subject to requirements under the federal hazardous waste program. Specifically, these wells are subject to the permit-by-rule requirements of 40 CFR 270.1(c)(1)(i) and 270.60(b), and the owner or operator must have a permit issued by EPA under the underground injection control program to the extent the permit is required by 40 CFR 144.14. An interim status facility that disposes of hazardous waste by underground injection is subject to the requirements of 40 CFR 265, subparts A through E and R.

(b) remains the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.53.105 INCORPORATION BY REFERENCE (1) and (2) remain the same.

(3) ~~When incorporated by reference in this chapter, references to~~ References in this chapter that incorporate 40 CFR 60, 61, 63, 124~~, and 40 CFR~~ 260 through 266, 268, 270, 273, or 279 refer to the version of that publication revised as of July 1, ~~2002~~ 2004. References in this chapter to 40 CFR 124~~, and 40 CFR~~ 260 through 266, 268, 270, 273, or 279 that incorporate publications refer to the version of the publication as specified at 40 CFR 260.11. Provisions within 40 CFR 60, ~~Appendix A, methods 1-5,~~ 61, and 63 that are referenced in 40 CFR 124, 260 through 266, 268, 270, 273 or 279 are also incorporated by reference.

(4) through (7) remain the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.53.107 SUBSTITUTION OF STATE TERMS FOR FEDERAL TERMS

(1) ~~When~~ The following terms used in ~~Title 40 of the CFR~~ 40 CFR 124, 261, 262, 264 through 266, 268, 270, 273, or 279, as adopted and incorporated by reference in this chapter, ~~the following terms~~ have the meanings specified below, unless otherwise indicated in these rules:

(a) through (d) remain the same.

(e) "Environmental protection agency", "U.S. environmental protection agency", or "EPA" means the Montana department of environmental quality, except for:

(i) through (m)(iii) remain the same.

(iv) 40 CFR 264.143(e)(1)~~;~~, ~~265.143(d)(1);~~ 264.145(e)(1)~~;~~, ~~265.145(d)(1);~~ 264.147(a)(1)(ii), 264.147(b)(1)(ii), 264.147(g)(2), ~~and~~ 264.147(i)(4)~~;~~, ~~and~~ 265.143(d)(1), 265.145(d)(1), ~~265.147(a)(2)(ii)(g)(2)~~ 265.147(a)(1)(ii), 265.147(g)(2), and 265.147(i)(4); and

(v) remains the same.

(n) Any reference to the "department of transportation" or "DOT" shall mean the U.S. department of transportation.

(2) and (3) remain the same.

(4) The substitution of terms in (1) ~~of this rule~~ does not apply in the following portions of 40 CFR 260 through 40 CFR 270, as adopted and incorporated by reference in this chapter:

(a) 40 CFR 261.4(b)(11)(ii);

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

(d) 40 CFR 261.10;

(e) 40 CFR 261.11;

(f) 40 CFR 262.10(g);

(c) through (k) remain the same, but are renumbered (g) through (o).

~~(l)~~ (p) 40 CFR 264.12(a)(1);

~~(m)~~ (q) 40 CFR 265.12(a)(1);

~~(n) 40 CFR 270.2;~~

(r) 40 CFR 268.2(j);

(s) the following 40 CFR 270.2 definitions:

(i) "administrator";

(ii) "approved program or approved State";

(iii) "director";

(iv) "environmental protection agency";

(v) "EPA";

(vi) "final authorization";

(vii) "interim authorization";

(viii) "major facility";

(ix) "permit";

(x) "regional administrator"; and

(xi) "state/EPA agreement";

~~(o)~~ (t) 40 CFR 270.10(e)(2) and ~~(4)~~(3);

~~(p)~~ (u) 40 CFR 270.10(f) ~~and (g)~~ (2) and (3);

(v) 40 CFR 270.10(g)(1)(i) and (ii);

(q) through (s) remain the same, but are renumbered (w) through (y).

~~(t)~~ (z) 40 CFR 270.72(a)(5); ~~and~~

~~(u)~~ (aa) 40 CFR 270.72(b)(5)~~.~~; and

(ab) 40 CFR 279.43(c)(3)(ii).

~~(5) In 40 CFR 263, as adopted and incorporated by reference in this chapter, the terms "EPA", "United States", and "administrator" have the same meaning as in the federal regulation, except in 40 CFR 263.22(e) "director of the Montana department of environmental quality" is substituted for "administrator".~~

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.53.208 PRIVILEGED BUSINESS INFORMATION (1) Any hazardous waste management facility that deems information that it submits to the department as confidential in that it is unique to the facility and would, if disclosed, reveal methods or processes entitled to protection as trade secrets shall, prior to submission of the information to the department, clearly label the information as confidential and/or obtain a protective order prohibiting disclosure to the public. Any information ~~which~~ that is not confidential as set forth herein must be disclosed to the public upon request.

(2) remains the same.

AUTH: 75-10-405, MCA
IMP: 75 10-405, MCA

17.53.212 DEPARTMENT DECISION TO ANSWER REQUEST

(1) through (5) remain the same.

(6) Failure of the department to issue a determination within the 10-day period or any extension constitutes an ~~final~~ agency decision ~~appealable~~ that may be appealed to the board.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.53.213 APPEAL (1) remains the same.

(2) ~~If a requestor chooses to appeal the decision of the board, the requestor must file a petition in district court within 30 days after service of the final agency decision according to 2-4-702, MCA.~~ The decision of the board on appeal must be issued within 20 business days after the date of receipt of the appeal request.

(3) Failure of the board to issue a decision within the prescribed time period in (2) constitutes a final agency decision and is a basis for judicial review.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.53.301 DEFINITIONS (1) remains the same.

(2) In this chapter, the following terms shall have the meanings or interpretations shown below:

(a) The "Act or RCRA" definition at 40 CFR 260.10 is excluded from the incorporation by reference at ARM 17.53.301(1). "Act" has the meaning given to it at ARM 17.53.107(1)(a).

(a) through (e) remain the same, but are renumbered (b) through (f).

(g) In the "existing tank system or existing component" definition at 40 CFR 260.10, the installation commencement date is July 14, 1986, for HSWA tanks, and June 7, 1989, for non-HSWA tanks.

(f) through (i) remain the same, but are renumbered (h) through (k).

~~(j)~~ (l) "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste:

(i) for which installation commenced after July 14, 1986, for HSWA tanks, as defined in (2)~~(f)~~(h) ~~of this rule~~, and June 7, 1989, for non-HSWA tanks, as defined in (2)~~(j)~~(n) ~~of this rule~~; or

(ii) remains the same.

(k) and (l) remain the same, but are renumbered (m) and (n).

(o) "RCRA" when used prior to numbered citations, e.g., "RCRA §3008" means the Resource Conservation and Recovery Act. "RCRA" alone, without a numbered citation, has the same meaning as "Act" as defined in ARM 17.53.107(1)(a).

(p) "Registration" means notification by a hazardous waste generator through the use of a registration form provided by the department.

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

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.53.401 NO STATE WASTE DELISTING - FEDERAL PETITION REQUIRED (1) remains the same.

(2) The provisions in 40 CFR 260.20, 260.21 and 260.23, pertaining to rulemaking petitions, are not incorporated by reference. Thus, any reference to petitions under these provisions in 40 CFR 124, 260 through 266, 268, 270, 273, and 279, incorporated by reference by this chapter, are not applicable under the Montana hazardous waste program.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.53.502 EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (1) remains the same.

(2) In 40 CFR 261.4(e)(2)(vi), pertaining to treatability study samples and generator reporting, "annual" is substituted for "biennial".

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

~~(3) 40 CFR 261, Appendix IX, is not adopted and incorporated by reference.~~

(4) In 40 CFR 261.4(f)(1), pertaining to treatability studies, the phrase "director of the Montana department of environmental quality" is substituted for "Regional Administrator, or State Director (if located in an authorized State)".

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

~~(5)~~ (6) In 40 CFR 261.21(a)(4), "an oxidizer as defined in 49 CFR 173.127(a)" is substituted for "an oxidizer as defined in 49 CFR 173.151".

(6) remains the same, but is renumbered (7).

(8) Appendix IX of 40 CFR 261, pertaining to wastes excluded under 40 CFR 260.20 and 260.22, is not adopted and incorporated by reference.

AUTH: 75-10-204, 75-10-404, 75-10-405, MCA
IMP: 75-10-203, 75-10-204, 75-10-403, 75-10-405, 75-10-602, MCA

17.53.602 EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

(1) In 40 CFR 262.11(c)(1), pertaining to hazardous waste determination, the phrase "or according to an equivalent method approved by the Administrator under 40 CFR 260.21" is not adopted and incorporated by reference.

(2) In 40 CFR 262.40(b), pertaining to generator recordkeeping, "annual" is substituted for "biennial".

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

~~(2)~~ (4) In 40 CFR 262.42(a)(2) and (b), pertaining to exception reporting, the words "in the Region in which the

generator is located" are not adopted and incorporated by reference.

(3) through (8) remain the same, but are renumbered (5) through (10).

(11) In 40 CFR 262, Appendix, Item 19, pertaining to the Uniform Hazardous Waste Manifest and instructions, the second paragraph and the list of EPA administrators is not adopted and incorporated by reference. Also, "Montana" is substituted for "authorized States (i.e., those States that have received authorization from the U.S. EPA to administer the hazardous waste program)".

AUTH: 75-10-204, 75-10-404, 75-10-405, MCA
IMP: 75-10-204, 75-10-225, 75-10-405, MCA

17.53.702 EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (1) All references to "EPA", ~~"United States",~~ and "administrator" are retained, except for 40 CFR 263.11(a) and (b), and 40 CFR 263.22(e) where "administrator" should be replaced with "director of the Montana department of environmental quality".

(2) remains the same.

~~(3) The period of retention of records referred to in 40 CFR 263.22(e) may be extended by the department as well as by EPA.~~

~~(4)~~ (3) For at least three years after the date the hazardous waste was accepted by the initial transporter, ~~Copies~~ copies of the manifest, as required under 40 CFR 263.22(a), must be maintained on file at the transfer facility location for all hazardous waste shipments that are transported to a transfer facility.

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

AUTH: 75-10-204, 75-10-404, 75-10-405, MCA
IMP: 75-10-204, 75-10-212, 75-10-214, 75-10-221, 75-10-405, 75-10-406, MCA

17.53.708 COMMERCIAL TRANSFER FACILITY REQUIREMENTS

(1) A commercial transfer facility is subject to ARM 17.53.702~~(5)~~(4), ~~and~~ 17.53.704, 17.53.706 and 17.53.707, and the public hearing requirements of 75-10-441, MCA.

(2) remains the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.53.802 EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

(1) remains the same.

(2) ~~In 40 CFR 264.4, pertaining to imminent hazard action, "75-10-415, MCA" is substituted for "7003 of RCRA".~~ 40 CFR 264.1(d), pertaining to underground injection, is not

adopted and incorporated by reference and is replaced by the requirements in ARM 17.53.102(3).

(3) The requirements in 40 CFR 264.1(g)(1), pertaining to exclusions from the requirements of 40 CFR 264, are replaced with: "The standards set forth in this subchapter do not apply to owners or operators of solid waste management systems licensed by the department pursuant to ARM Title 17, chapter 50, subchapter 5, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation by the requirements for conditionally exempt small quantity generators in 40 CFR 261.5 as incorporated by reference in ARM 17.53.501(1)".

~~(3)~~ (4) In 40 CFR 264.12(a)(1), pertaining to required notices, the reference to "Regional Administrator" is retained.

~~(4)~~ (5) ARM 17.53.803 is substituted for 40 CFR 264.75, pertaining to biennial reports, and all references to "biennial report" in 40 CFR 264 are replaced with "annual report."

~~(5) In 40 CFR 264.77, "annual" is substituted for "biennial".~~

(6) In 40 CFR 264.143(h) and 264.145(h), pertaining to financial assurance and cost estimate for closure and post-closure, the language "If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance must be submitted to and maintained by the director and submitted to the director of the environmental agency in each of the states within which the other facilities are located. If a facility is located in an unauthorized state, the evidence must be submitted to the appropriate regional administrator." is substituted for "If the facilities covered by the mechanism are in more than one region, identical evidence of financial assurance must be submitted to and maintained with the regional administrators of all such regions."

(6) remains the same, but is renumbered (7).

~~(7) The standards set forth in this subchapter do not apply to owners or operators of solid waste management systems licensed by the department pursuant to ARM Title 17, chapter 50, subchapter 5, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation by the requirements for conditionally exempt generators in 40 CFR 262.~~

(8) In 40 CFR 264.151, the language pertaining to the filing of financial instruments with the regional administrators of the various regions in which the owners or operators have facilities applies to the filing of financial instruments with the directors of the environmental agencies of the various states in which the owners or operators have facilities, or the regional administrator of the appropriate region if a particular state is unauthorized.

(8) through (13) remain the same, but are renumbered (9) through (14).

(15) In 40 CFR 264.221(e)(2)(i)(B), 264.301(e)(2)(i)(B), and 264.314(f)(2), pertaining to the definition of the term "underground source of drinking water", "40 CFR 270.2" is substituted for "144.3 of this chapter".

~~(14)~~ (16) In 40 CFR 264.221(e)(2)(i)(C) and 264.301(e)(2)(i)(C), pertaining to design and operating requirements for surface impoundments, "~~with~~ final state permits under Title 17, chapter 53, subchapter 12" is substituted for "permits under RCRA section 3005(c)" and "permits under RCRA 3005(c)", respectively. All language referring to permitting under RCRA section 3005 or 3005(c) found in 40 CFR 264, incorporated by reference in ARM 17.53.801(1), is also replaced with "final state permits under subchapter 12".

(15) and (16) remain the same, but are renumbered (17) and (18).

(19) In 40 CFR 264.570(a), pertaining to drip pads, "December 6, 1990 for HSWA drip pads, and September 25, 1992 for non-HSWA drip pads" is substituted for "December 6, 1990".

(20) In 40 CFR 264.570(a), "December 24, 1992 for HSWA drip pads, and September 25, 1992 for non-HSWA drip pads" is substituted for "December 24, 1992".

(21) In 40 CFR 264.1030(c), "40 CFR 124.5" is substituted for "40 CFR 124.15".

(22) In 40 CFR 264.1050(c), "40 CFR 124.5" is substituted for "40 CFR 124.15".

(23) In 40 CFR 264.1080(c), "40 CFR 124.5" is substituted for "40 CFR 124.15".

(24) In 40 CFR 264.1082(c)(4)(ii), pertaining to treated organic hazardous constituents in waste, the second occurrence of "EPA" is retained.

AUTH: 75-10-404, 75-10-405, 75-10-406, MCA
IMP: 75-10-405, 75-10-406, MCA

17.53.803 ANNUAL REPORT FROM FACILITIES (1) The owner or operator of a permitted hazardous waste management facility (75-10-406, MCA) or a facility under a corrective action order (75-10-425, MCA) shall prepare and submit an annual report to the department, on forms obtained from the department, by March 1 of each year. The annual report must cover facility activities during the previous calendar year and must include the following information:

(a) through (e) remain the same.

(f) the most recent ~~closure~~ cost estimate for:

(i) closure under 40 CFR 264.142~~,~~; ~~and~~

(ii) ~~for disposal facilities the most recent~~ post-closure for disposal facilities ~~cost estimate~~ under 40 CFR 264.144; and

(iii) corrective action under 40 CFR 264.101 and the applicable Montana hazardous waste permit;

(g) through (i) remain the same.

AUTH: 75-10-204, 75-10-405, MCA
IMP: 75-10-204, MCA

17.53.902 EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

(1) and (2) remain the same.

(3) ~~In 40 CFR 265.4, pertaining to imminent hazard action, "75-10-415, MCA" is substituted for "7003 of RCRA".~~ 40 CFR 265.1(c)(4), pertaining to the scope of permits, is not adopted and incorporated by reference.

(4) The requirements in 40 CFR 265.1(c)(5) are replaced with: "The standards set forth in this subchapter do not apply to owners or operators of solid waste management systems licensed by the department pursuant to ARM Title 17, chapter 50, subchapter 5, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation by the requirements for conditionally exempt generators in 40 CFR 261.5, as incorporated by reference in ARM 17.53.501(1)".

(5) In 40 CFR 265.12(a)(1), pertaining to required notices, the reference to "regional administrator" is retained.

~~(4)~~ (6) ARM 17.53.903 is substituted for 40 CFR 265.75, pertaining to biennial reports, and all references to "biennial report" in 40 CFR 265 are replaced with "annual report".

~~(5) In 40 CFR 265.77, "annual" is substituted for "biennial".~~

(7) In 40 CFR 265.143(g) and 265.145(g), pertaining to financial assurance and cost estimates for closure and post-closure, the language "If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance must be submitted to and maintained by the director and submitted to the director of the environmental agency in each of the states within which the other facilities are located. If a facility is located in an unauthorized state, the evidence must be submitted to the appropriate regional administrator." is substituted for "If the facilities covered by the mechanism are in more than one region, identical evidence of financial assurance must be submitted to and maintained with the regional administrators of all such regions."

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

~~(7) 40 CFR 265, Subpart R, pertaining to underground injection, is not adopted and incorporated by reference.~~

~~(8) 40 CFR 265, Appendices I, III, and IV, pertaining to record keeping instructions, EPA primary drinking water standards and statistical tests, are not adopted and incorporated by reference.~~

(9) through (14) remain the same.

~~(15) In 40 CFR 265.301(d)(2)(i)(B), pertaining to the definition of the term "underground source of drinking water", "40 CFR 270.2" is substituted for "144.3 of this chapter".~~

~~(16)~~ (15) In 40 CFR 265.221(d)(2)(i)(C) and 265.301(d)(2)(i)(C), "Title 17, chapter 53, subchapter 12, the state permitting program" is substituted for "RCRA Section 3005(c)". All references to RCRA section 3005 or 3005(c) concerning permitting in 40 CFR 265, incorporated by reference at ARM 17.53.901(1), also are replaced with "subchapter 12, the state permitting program".

~~(17)~~ (16) In 40 CFR 265.221(d)(2)(i)(B), 265.301(d)(2)(i)(B) and 265.314(g)(2), pertaining to the definition of the term "underground source of drinking water", "40 CFR 270.2" is substituted for "144.3 of this chapter".

(18) remains the same, but is renumbered (17).

(18) 40 CFR 265, subpart R, pertaining to underground injection, is not adopted and incorporated by reference. Instead, interim status facilities that dispose of hazardous waste by underground injection are subject to the requirements in ARM 17.53.102(3).

(19) In 40 CFR 265.440(a), pertaining to drip pads, "December 6, 1990 for HSWA drip pads, and September 25, 1992 for non-HSWA drip pads" is substituted for "December 6, 1990".

(20) In 40 CFR 265.440(a), "December 24, 1992 for HSWA drip pads, and September 25, 1992 for non-HSWA drip pads" is substituted for "December 24, 1992".

(21) In 40 CFR 265.1080(c)(1) and (2), "40 CFR 124.5" is substituted for "40 CFR 124.15".

(22) In 40 CFR 265.1083(c)(4)(ii), pertaining to treated organic hazardous constituents in waste, the second occurrence of "EPA" is retained.

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.53.1002 EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (1) and (2) remain the same.

(3) 40 CFR 266.102(d)(3) and 40 CFR 266.103, pertaining to permits and interim status standards for burners, are not adopted and incorporated by reference. Montana does not allow interim status for boilers and industrial furnaces. In addition, the following language is exempted from the incorporation by reference of 40 CFR 266 in ARM 17.53.1001(1) to reflect that Montana does not allow interim status for boilers and industrial furnaces:

(a) in 40 CFR 266.100(a), "under interim status or";

(b) in 40 CFR 266.100(e), "or the interim status standards of §266.103";

(c) in 40 CFR 266.102(a), "and not operating under interim status";

(d) in 40 CFR 266.102(b)(1), "or, for facilities operating under interim status standards of this subpart, as a portion of the trial burn plan that may be submitted before the part B application under provisions of 40 CFR 270.66(g) of

this chapter" and "not operating under the interim status standards";

(e) in 40 CFR 266.102(d)(4), "new" and "(those boilers and industrial furnaces not operating under the interim status standards)";

(f) in 40 CFR 266.104(e)(1), 266.106(c)(3), 266.106(d)(6) and 266.107(d), "(for new facilities or an interim status facility applying for a permit), or compliance test (for interim status facilities)"; and

(g) in 40 CFR 266.106(c)(5), "or interim status controls".

~~(3) In 40 CFR 266.102(b)(1), pertaining to hazardous waste analyses, the words "or, for facilities operating under interim status standards of this subpart, as a portion of the trial burn plan that may be submitted before the part B application under provisions of 40 CFR 270.66(g) of this chapter" and "not operating under the interim status standards" are not adopted and incorporated by reference.~~

~~(4) 40 CFR 266.102(d)(3), pertaining to permitting provisions for boilers and industrial furnaces operating under interim status standards, is not adopted and incorporated by reference under ARM 17.53.1001(1).~~

~~(5) In 40 CFR 266.102(d)(4), pertaining to permit standards for burners, the words "new" and "(those boilers and industrial furnaces not operating under the interim status standards)" are not adopted and incorporated by reference.~~

~~(6)~~ (4) ~~The following is substituted for~~ 40 CFR 266.102(e)(3)(ii), pertaining to ~~startup and shutdown of~~ the exemption from the particulate standards for a boiler or industrial furnace, is not adopted and incorporated by reference. The following requirement is substituted for 40 CFR 266.102(e)(3)(ii): "In conjunction with the permit application, the department may require the owner or operator of a boiler or an industrial furnace to submit a plan that will require a cessation of the burning of hazardous waste during prolonged inversion conditions. The department shall consider the proximity of the boiler or industrial furnace to populated areas when determining the need for such a plan. The plan, if determined to be necessary by the department, must include an ambient air monitoring program to establish the conditions under which the burning will be halted and under which it may then be resumed, unless the owner or operator provides an alternate method for determining such conditions."

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

~~(8) The following is substituted for 40 CFR 266.103(a)(1)(ii), pertaining to interim status standards for boilers and industrial furnaces: "A boiler or industrial furnace may not be operated under interim status unless it was in operation burning or processing hazardous waste on or before August 21, 1991; facilities for which construction to burn or process hazardous waste had commenced, but that were not in operation as of that date, do not qualify for interim status."~~

(9) through (11) remain the same, but are renumbered (6) through (8).

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.53.1102 EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL LAND DISPOSAL RESTRICTIONS (1) through (1)(c) remain the same.

(d) ~~exemption~~ variance from a treatment standard, pursuant to 40 CFR 268.44.

(2) remains the same.

(3) "Hazardous wastes ~~that are not identified or listed~~ for which land disposal prohibitions or treatment standards have not been promulgated in 40 CFR 268, subparts C or D, as incorporated ~~in this rule~~ by reference in ARM 17.53.1001(1);" is substituted for 40 CFR 268.1(e)(3), pertaining to hazardous waste not subject to land disposal restrictions.

(4) In 40 CFR 268.9(d), pertaining to special rules regarding wastes that exhibit a characteristic, "department" is substituted for "EPA Region or authorized state".

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

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.53.1202 EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM

(1) through (4) remain the same.

(5) The following ~~is~~ provisions are added as paragraphs (l) through (n) to the general application requirements in 40 CFR 270.10(a) through ~~(f)~~(k):

"~~(g)~~ (l) All applications must be accompanied by the appropriate fees as provided in these rules.

~~(h)~~ (m) Any application submitted to EPA and deemed by EPA to be complete shall be considered to be complete by the department.

~~(i)~~ (n) The requirements of this chapter must be coordinated with but do not alter the applicable requirements for new facilities set forth in Title 75, chapter 20, MCA, Montana Major Facility Siting Act."

(6) through (10) remain the same.

(11) "An annual report must be submitted covering facility activities. (See ARM 17.53.803)" is substituted for 40 CFR 270.30(l)(9), pertaining to biennial reports.

(12) remains the same.

(13) The following is substituted for 40 CFR 270.32(c), pertaining to "applicable requirements":

(a) remains the same.

(b) The department may reopen the comment period using the procedures at 40 CFR 124.14, incorporated by reference at ARM 17.53.1201(1), ~~If~~ if new requirements become effective, including any interim final regulations, during the permitting process that:

(i) remains the same.

(ii) are of sufficient magnitude to make additional proceedings desirable~~, the department may reopen the comment period~~."

(14) through (17) remain the same.

(18) 40 CFR 270.64, pertaining to interim permits for injection wells, is not adopted and incorporated by reference. Instead, injection wells used for hazardous waste disposal are subject to the requirements of ARM 17.53.102(3).

(18) remains the same, but is renumbered (19).

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.53.1302 EXCEPTIONS AND ADDITIONS TO ADOPTION OF UNIVERSAL WASTE RULE (1) and (2) remain the same.

(3) In 40 CFR 273.18(g), 273.38(g), and 273.61(c), pertaining to off-site shipments, "department" is substituted for "appropriate regional EPA office" and "EPA regional office".

(4) 40 CFR 273.80, pertaining to petitions to add a hazardous waste or a category of hazardous wastes to the standards for universal waste management in 40 CFR 273, is not adopted and incorporated by reference.

AUTH: 75-10-405, MCA
IMP: 75-10-404, 75-10-405, MCA

4. The proposed new rules provide as follows:

NEW RULE I RECOVERY OF FEES AND COSTS OF ACTION

(1) Nothing in this subchapter shall prevent a party that substantially prevails in an action filed in the district court for access to information from recovering its reasonable court costs and attorney fees as provided by law.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

NEW RULE II FEES FOR SEARCHING AND COPYING (1) The fees for copying records will be determined by the department and published in the department's policies and procedures.

(2) This fee may be reduced or waived by the department if furnishing the information can be considered as primarily benefiting the general public.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

NEW RULE III EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO THE MANAGEMENT OF USED OIL

(1) 40 CFR 279.82(b), pertaining to the use of used oil as a dust suppressant, is not adopted and incorporated by reference.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

5. The rule proposed for repeal provides as follows:

17.53.106 SUBSTITUTION OF STATE PERMITTING PROCEDURES (AUTH: 75-10-405, MCA; IMP, 75-10-405, MCA), located at page 17-4826, Administrative Rules of Montana.

REASON: The Department received comments from the Environmental Protection Agency (EPA), dated November 24, 2000, concerning a previous Department rulemaking proceeding in which the Department revised the format of the hazardous waste management rules by, with some specified exceptions, replacing the state rules with incorporation by reference of the comparable federal regulations. The Department addressed many of EPA's comments in rulemakings effective January 26, 2001, and March 15, 2002. EPA reviewed the March 15, 2002, version of the program rules and suggested additional revisions which are addressed in this rulemaking.

The proposed amendments to ARM 17.53.102, 17.53.105, 17.53.107, 17.53.301, 17.53.401, 17.53.502, 17.53.602, 17.53.702, 17.53.802, 17.53.902, 17.53.1002, 17.53.1102, 17.53.1202, and 17.53.1302 refine the substitution of terms and phrases necessary to adapt the applicable portions of the Code of Federal Regulations (CFR) to state use in an incorporation by reference format.

The proposed amendment to ARM 17.53.212 is a clerical revision.

The proposed amendment of the CFR publication date in ARM 17.53.105(3) would update the incorporations by reference by adopting the most recent edition of the CFR. The amendment would allow the Department to follow the most recent edition of federal regulations, and thus maintain comity with EPA, to preserve program authorization.

The proposed amendments to ARM 17.53.208 are necessary to preserve program authorization and conform the state rule to the comparable federal rule.

The proposed addition of ARM 17.53.213(2) and (3) is necessary to preserve program authorization and conform the state rule to the comparable federal rule.

The proposed amendment to ARM 17.53.708 revises a citation that must be changed because of revisions to ARM 17.53.702.

The proposed addition of ARM 17.53.802(19) and (20) and 17.53.902(19) and (20) provides compliance dates for certain drip pads. This language was intended to be included in the previous rulemaking, but was inadvertently omitted. These amendments are necessary to preserve program authorization.

The proposed amendments to ARM 17.53.803, concerning the annual report from hazardous waste management facilities, would require facilities to report cost estimates for corrective action in their annual facility report. Montana was authorized for corrective action on December 26, 2000 (65

FR 81381). It is necessary to update the annual facility report to include cost estimates for corrective action in accordance with 40 CFR 264.101, 40 CFR 264 subpart S, and the applicable Montana hazardous waste permit.

The proposed adoption of NEW RULE I and NEW RULE II is necessary to preserve program authorization and would make the hazardous waste management rules equivalent to the comparable federal regulations regarding access to information. These revisions are required by RCRA Revision Checklist "Section 3006(f): Availability of Information, November 8, 1984".

The proposed adoption of NEW RULE III would exclude 40 CFR 279.82(b) from incorporation into the hazardous waste management rules. Section 40 CFR 279.82(b), pertaining to the use of used oil as a dust suppressant, is a non-delegable provision.

The proposed repeal of ARM 17.53.106 is necessary because the content has been incorporated into ARM 17.53.105.

6. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Keith Christie, Legal Unit, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; by fax (406) 444-4386; or by email to kchristie@mt.gov, no later than March 10, 2005. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. Keith Christie, attorney, has been designated to preside over and conduct the hearing.

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

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

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

David Rusoff BY: *Tom Livers*
DAVID RUSOFF TOM LIVERS, Deputy Director
Rule Reviewer

Certified to the Secretary of State, January 3, 2005.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed adoption of NEW RULES I - IX, pertaining to delegation, and the proposed repeal of ARM 8.32.1701, 8.32.1702, 8.32.1703, 8.32.1704, 8.32.1705, 8.32.1706, 8.32.1707, 8.32.1708, 8.32.1709, 8.32.1710, 8.32.1711, 8.32.1712, and 8.32.1713, pertaining to delegation	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On February 3, 2005, at 10:00 a.m., a public hearing will be held in room B-07, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed adoption and repeal 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 Board of Nursing no later than 5:00 p.m., January 28, 2005, to advise us of the nature of the accommodation that you need. Please contact Joan Bowers, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2342; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnur@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: It is reasonable and necessary to repeal ARM 8.32.1701 through 8.32.1713 and adopt new rules I through IX because the Board received numerous requests in the past year that it revisit and rewrite the rules relating to delegation and assignment. The requests were grounded on one of three general contentions: 1) that the existing rules are redundant and difficult to understand; 2) that the existing rules are outdated and do not reflect changing needs and practices in the workplace; 3) that UAPs with specific skill sets and certifications should be able to receive delegation of certain advanced nursing tasks in the acute care setting where delegation is currently prohibited by rule. In addition, one commentor had discovered that a Board rule relating to delegation and residential treatment facilities conflicted with a DPHHS rule.

The other catalyst for these proposed new rules was that within the past year, the Board drafted some proposed amendments to its delegation rules for the purpose of allowing delegation of nursing tasks in the acute care setting to UAPs who were currently enrolled nursing students. The Board had chosen the term "nurse apprentice" to distinguish nursing students working as UAPs in facilities from nursing students obtaining their clinical experience in facilities as part of their education program. The board had also proposed to set standards of practice (expectations relating to performance) for the nurse apprentice-UAPs. Those proposed rules did not get noticed for hearing because they were deemed to create a new category of regulated allied health care worker over which the Board of Nursing was assuming jurisdiction and against whom standards would be enforced, all in excess of the Board's legislative authority.

These proposed new rules incorporate some of the same work product developed earlier relating to delegation of nursing tasks to nursing students but the defects of the earlier drafts have been rectified. These proposed new rules properly set standards for and regulate the licensed nurses involved in the delegation process rather than setting standards for and regulating the students.

The Board's work on the student nurse issue evolved into the more global issue of delegating advanced nursing tasks to other UAPs with other special skill sets/certifications without regard to setting. The Board termed that principle "advanced delegation" in New Rule IX. The Board formed a task force to review the delegation rules and bring its recommendation to the Board. The proposed new rules are a product of the task force as revised by the Board.

4. The proposed new rules provide as follows:

NEW RULE I PURPOSE (1) The purpose of these rules relating to delegation and assignment is:

(a) to serve as a standard for nurses who hire, supervise, and/or serve as a delegator to unlicensed assistive personnel (UAP); and

(b) to establish minimal acceptable levels of safe and effective delegation.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

NEW RULE II DEFINITIONS The following words and terms as used in this sub-chapter have the following meanings:

(1) "Accountability" means the responsibility of the delegating nurse for the decision to delegate, for verifying the competency of the UAP delegatee, and for supervising the performance of the delegated task.

(2) "Acute care" means health care received in response to a particular episode of illness or injury, delivered in a licensed healthcare facility that has an organized medical staff, which may include advanced practice registered nurse (APRN) providers, and provides care by licensed registered nurses.

(3) "Advanced delegation" means delegation of specified advanced nursing tasks to specified UAPs only as allowed in [NEW RULE IX].

(4) "Assignment" means giving to a UAP or licensee a specific task that the UAP or licensee is competent to perform and which is within the UAP's or licensee's area of accountability or scope of practice.

(5) "Chief nursing officer" means the nurse executive who:

(a) directs the facility's nursing services;

(b) establishes nursing policies and procedures; and

(c) establishes nursing standards of patient care, treatment, and services specific to the facility.

(6) "Community based residential setting" means a setting in which the client lives in the client's own home or apartment, home of a relative, foster home, or group home.

(7) "Competency" means performance standards including skills, knowledge, abilities and understanding of specific tasks that are required in a specific role and setting.

(8) "Delegatee" means the UAP receiving the delegation.

(9) "Delegation" means the act of authorizing and directing a UAP to perform a specific nursing task in a specific situation in accordance with these rules.

(10) "Delegator" means the nurse who makes the decision to delegate and thereby assumes accountability as defined in this rule. The term "delegator" has the same meaning as the term "delegating nurse".

(11) "Direct supervision" means the nurse delegator is on the premises, and is quickly and easily available to the UAP.

(12) "Immediate supervision" means the nurse delegator is on the premises and is within audible and visual range of the patient that the UAP is attending.

(13) "Indirect supervision" means the nurse delegator is not on the premises but has previously given written instructions to the UAP for the care and treatment of the patient.

(14) "Nursing assessment" means an ongoing process of determining nursing care needs based upon collection and interpretation of data relevant to the health status of the patient.

(15) "Nursing judgment" means the intellectual process that a nurse exercises in forming an opinion and reaching a clinical decision based upon analysis of the evidence or data.

(16) "Nursing student" means a person currently enrolled and studying in a state nursing board-approved or state nursing commission-approved nursing education program.

(a) Enrollment includes all periods of regularly planned educational programs and all school scheduled vacations and holidays.

(b) Enrollment does not include any leaves of absence or withdrawals from the nursing program, or enrollment solely in academic non-nursing course work.

(17) "Nursing task" means an activity that requires judgment, analysis, or decision-making based on nursing knowledge or expertise and one that may change based on the individual client or situation.

(18) "Stable" means a state of health in which the prognosis indicates little, if any, immediate change.

(19) "Supervision" means the provision of guidance or direction, evaluation and follow-up by the licensed nurse for accomplishment of a nursing task delegated to a UAP.

(20) "Unlicensed assistive person" or "UAP" means any person, regardless of title, who is not a licensed nurse and who functions in an assistive role to the nurse and receives delegation of nursing tasks and assignment of other tasks from a nurse.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

NEW RULE III ACCOUNTABILITY (1) The delegating nurse retains accountability for:

(a) the decision to delegate;

(b) the delegated task;

(c) verifying the delegatee's competency to perform the task; and

(d) providing supervision.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

NEW RULE IV CRITERIA FOR DELEGATION OF NURSING TASKS

(1) A licensed nurse may only delegate nursing tasks to UAPs in accordance with these rules. Delegation of a nursing task to a UAP shall be based solely on the determination of the patient's nurse, who has personally assessed the patient's condition, that delegation can be performed without jeopardizing the patient's welfare. Delegation shall be task-specific, patient-specific, and UAP-delegatee specific.

(2) The delegating nurse must:

(a) personally make a nursing assessment of the patient's care needs before delegating;

(b) verify the UAP's competency to perform the specific task for the specific patient and provide instruction as necessary followed by reverification of competency before delegating; and

(c) provide supervision in accordance with [NEW RULE VI].

(3) The nursing task to be delegated must be:

(a) within the area of responsibility, scope of practice, and competency of the nurse delegating the task;

(b) one which does not require complex observations, critical decision-making, exercise of nursing judgment, or repeated nursing assessments;

(c) one which is frequently performed and is generally considered technical in nature;

(d) one for which results are reasonably predictable and which has minimal potential for risks; and

(e) one which can be safely performed according to exact, unchanging directions.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

NEW RULE V STANDARDS RELATED TO THE FACILITY'S CHIEF NURSING OFFICER REGARDING DELEGATION PRACTICES (1) The facility's chief nursing officer is responsible for ensuring that:

(a) the UAP is oriented to the facility and specific role;

(b) the UAP's skills are observed, evaluated and documented;

(c) a written UAP job description, specific to setting, is provided to the UAP and to the delegator;

(d) with respect to advanced delegation as provided in [NEW RULE IX], the UAP's satisfactory completion of education and maintenance of certification is verified;

(e) verification is performed of a nursing student's:

(i) current enrollment in a nursing education program approved by a state nursing board or a state nursing commission;

(ii) satisfactory completion of each academic period; and

(iii) current level of educational preparation as documented in writing by the nursing education program;

(f) a name badge which includes first and last name and specific title in standard, bold face font no less than 18 point is provided to the UAP and is worn at all times when on duty, with the exception of settings requiring sterile attire;

(g) each nurse in the organization is educated on the process of delegation and the nurse's competency to delegate in accordance with these rules is assessed; and

(h) policy and procedures concerning delegation of nursing tasks are developed and implemented consistent with this subchapter.

(2) A violation of any rule in this subchapter constitutes unprofessional conduct under ARM 8.32.413.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

NEW RULE VI STANDARDS RELATED TO THE NURSE FUNCTIONING AS A DELEGATOR (1) The degree of required supervision of the

UAP by the delegating nurse shall be determined by the delegating nurse after evaluation of factors described in this subchapter including, but not limited to, the following:

(a) stability of the patient's condition;

(b) training and capability of the specific UAP delegatee;

(c) nature of the nursing task being delegated;

(d) proximity and availability of the nurse to the UAP when the nursing task will be performed; and

(e) setting.

(i) In an acute care or skilled nursing facility setting, the delegating nurse shall provide, at a minimum, direct supervision for any delegated nursing task.

(ii) For advanced delegation as authorized in [NEW RULE IX], the delegating nurse shall provide immediate supervision for any delegated nursing task.

(iii) In nonacute settings, the delegating nurse shall provide, at a minimum, indirect supervision for any delegated nursing task while still remaining readily available to the delegatee either in person or by telecommunication.

(2) The delegating nurse shall retain accountability for the:

(a) safety of the patient;

(b) nursing process;

(c) patient assessment; and

(d) delegation of nursing tasks appropriate to the UAP's documented knowledge, skills, and abilities.

(3) In nonacute settings, unless otherwise provided in this rule or indicated by the situation, the delegating nurse shall make a supervisory visit at least monthly to:

(a) evaluate the patient's health status;

(b) evaluate the performance of the delegated nursing task;

(c) determine whether goals are being met; and

(d) determine the appropriateness of continuing delegation of the task.

(4) Violation of any rule in this subchapter constitutes unprofessional conduct under ARM 8.32.413.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

NEW RULE VII NURSING TASKS RELATED TO MEDICATIONS THAT MAY BE DELEGATED (1) Administration of medication may only be delegated by the nurse in the following settings:

(a) schools;

(b) hospice residential facilities;

(c) Montana state prison;

(d) women's correctional center; and

(e) community based residential settings not defined as health care facilities in Title 50, chapter 5, MCA, except as otherwise provided herein.

(2) Medications administered pursuant to (1) are limited to the following types of medications and routes:

(a) pharmacy-prepared or authorized prescriber-prepared medications introduced into the body by inhalant dispenser or nebulizer;

(b) oral medication taken from:

(i) a prefilled, labeled medication holder;

(ii) a labeled unit dose container; or

(iii) an original marked and labeled pharmacy container;

(c) oral medication, either in liquid form which must be measured or in tablet form which must be broken, provided the nurse has calculated the dose and amount to be administered;

(d) suppository medication taken from:

(i) a prefilled, labeled medication holder;

(ii) a labeled unit dose container; or

(iii) an original marked and labeled pharmacy container;

(e) topical ointments, except as provided in [NEW RULE VIII]; and

(f) ear drops and eye drops taken from:

(i) a prefilled, labeled medication holder;

(ii) a labeled unit dose container; or

(iii) an original marked and labeled pharmacy container.

(3) In advanced delegation, administration of medication is restricted as specified in [NEW RULE IX].

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

NEW RULE VIII GENERAL NURSING FUNCTIONS AND TASKS THAT MAY NOT BE DELEGATED (1) The following nursing functions require nursing assessment, knowledge, judgment, and skill and may not be delegated:

(a) the nursing assessment;

(b) development of the nursing diagnosis;

(c) establishment of the nursing care goal;

(d) development of the nursing care plan; and

(e) evaluation of the patient's progress, or lack of progress, toward goal achievement.

(2) Nursing interventions, including but not limited to the following, require nursing knowledge, judgment, and skill and may not be delegated except as provided in [NEW RULES VII and IX]:

(a) medication administration and related activities including:

(i) calculation of any medication dose;

(ii) administration of medications:

(A) by mouth;

(B) sublingually;

(C) by subcutaneous injection;

(D) by intramuscular injection;

(E) per tube, by aerosol/inhalation; or

(F) by suppository;

(iii) intravenous injection or drip;

(iv) administration of:

(A) topical opiates;

(B) topical cardiovascular medications;

(C) topical anesthetic medications; or
(D) topical systemic medications;
(v) administration of blood products;
(vi) administration of chemotherapeutic agents; and
(vii) administration of total parenteral nutrition (TPN), hypertonic solutions, or IV additives;
(b) insertion of peripheral or central IV catheters;
(c) insertion of nasogastric or other feeding tubes;
(d) removal of:
(i) endotracheal tubes;
(ii) chest tubes;
(iii) Jackson-Pratt drain tubes (JP tubes);
(iv) arterial or central catheters; and
(v) epidural catheters; and
(e) triage.

(3) A nurse may not delegate to a UAP the authority to receive verbal orders from providers.

(4) A nurse may not delegate to a UAP the task of teaching or counseling patients or a patient's family relating to nursing and nursing services.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

NEW RULE IX ADVANCED DELEGATION (1) The board recognizes that the following UAP technicians are prepared by education, training, and certification, to receive delegation of the advanced nursing tasks specified in this rule. The delegation must be from a nurse authorized to delegate the specified advanced nursing tasks, in settings and populations congruent with the technicians' respective education and certification.

(2) A nurse may delegate the advanced nursing tasks specified in (3) to an emergency department technician only when the delegation:
(a) is made in the emergency department;
(b) is for an emergency department patient; and
(c) the delegatee:
(i) is under the immediate supervision of the delegating nurse; and
(ii) is both:
(A) a graduate of a nationally recognized EMT program; and
(B) certified as a nationally registered EMT-I or EMT-P.

(3) The advanced nursing tasks that may be delegated pursuant to (2) are:
(a) insertion of peripheral IV catheters; and
(b) hanging, without additives, initial IV fluids including:
(i) lactated Ringer's (LR);
(ii) normal saline (NS);
(iii) 5% dextrose in sterile water (D5W);
(iv) 5% dextrose in normal saline (D5NS);
(v) 5% dextrose in .45% saline (D5 1/2NS); and

(vi) 5% dextrose in lactated Ringer's (D5LR).

(4) A nurse may delegate the advanced nursing tasks specified in (5) to a dialysis technician only when the delegation:

(a) is made in an out-patient dialysis unit;

(b) is for a stable adult dialysis patient who has been on dialysis for more than 30 days; and

(c) the delegatee is:

(i) under the immediate supervision of the delegating nurse; and

(ii) is currently certified as a certified dialysis technician by either the:

(A) nephrology nursing certification commission (NNCC); or

(B) board of nephrology examiners - nursing and technology (BONENT).

(5) The advanced nursing tasks that may be delegated pursuant to (4) are:

(a) preparing dialysate according to established procedures and the dialysis prescription;

(b) assembling and preparing the dialysis extracorporeal circuit according to protocol and dialysis prescription;

(c) preparing and cannulating of mature fistula/graft. Maturity/stability will be established by a nurse prior to cannulation;

(d) initiating, delivering or discontinuing the dialysis treatment;

(e) obtaining a blood specimen via a dialysis line or a fistula/graft site; and

(f) administering the following medications under the immediate supervision of an RN:

(i) heparin, only in concentrations of 1:1000 units or less, in an amount prescribed by an individual authorized by Montana statute to so prescribe:

(A) to prime the extracorporeal circuit;

(B) to initiate treatment; and/or

(C) for routine administration throughout the treatment;

(ii) normal saline via the dialysis machine to correct dialysis-induced hypotension;

(iii) intradermal anesthetics, in an amount prescribed by an individual authorized by Montana statute to so prescribe, as an integral part of the vascular access cannulation procedure; and

(iv) oxygen by nasal cannula.

(6) A nurse may delegate the advanced nursing tasks specified in (7) to a nursing student only when the delegation:

(a) is supervised at the level determined by the delegating nurse in accordance with these rules; and

(b) the nursing student is:

(i) currently enrolled in an approved nursing education program;

(ii) in good academic standing; and

(iii) whose satisfactory completion of a course in the fundamentals of nursing has been verified.

(7) The advanced nursing tasks that may be delegated pursuant to (6) are:

(a) calculation of medication dose;

(b) administration of medications:

(i) by mouth;

(ii) sublingually;

(iii) by subcutaneous injection;

(iv) by intramuscular injection;

(v) per tube, by aerosol/inhalation; or

(vi) by suppository;

(c) administration of:

(i) topical opiates;

(ii) topical cardiovascular medications;

(iii) topical anesthetic medications; and

(iv) topical systemic medications;

(d) insertion of peripheral IV catheters; and

(e) any other nursing tasks within the level of education preparation, if confirmed by the nursing education program and allowed by facility job description.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

5. The Board of Nursing proposes to repeal the following rules:

8.32.1701 PURPOSE found at ARM page 8-1025.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

8.32.1702 NURSING TASKS THAT MAY BE DELEGATED found at ARM page 8-1025.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

8.32.1703 DEFINITIONS found at ARM page 8-1025.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

8.32.1704 SETTINGS WHERE DELEGATING IS APPROPRIATE found at ARM page 8-1025.1.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

8.32.1705 CRITERIA FOR DELEGATION - DELEGATION OF NURSING TASKS TO UNLICENSED PERSONS SHALL COMPLY WITH THE FOLLOWING CRITERIA found at ARM page 8-1025.1.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

8.32.1706 SUPERVISION found at ARM page 8-1025.2.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

8.32.1707 NURSING FUNCTIONS found at ARM page 8-1025.3.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

8.32.1708 NURSING TASKS RELATED TO ADMINISTRATION OF MEDICATIONS THAT MAY BE DELEGATED found at ARM page 8-1025.3.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

8.32.1709 GENERAL NURSING TASKS THAT MAY NOT BE DELEGATED found at ARM page 8-1025.4.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

8.32.1710 PATIENT HEALTH TEACHING AND HEALTH COUNSELING found at ARM page 8-1025.4.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

8.32.1711 LIABILITY found at ARM page 8-1025.4.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

8.32.1712 TASKS WHICH MAY BE ROUTINELY ASSIGNED TO AN UNLICENSED PERSON IN ANY SETTING WHEN A NURSE-PATIENT RELATIONSHIP EXSITS found at ARM page 8-1025.5.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

8.32.1713 NURSING TASKS RELATED TO GASTROSTOMY FEEDING THAT MAY BE DELEGATED found ARM page 8-1025.6.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-

mail to dlibsdnur@mt.gov, and must be received no later than 5:00 p.m., February 10, 2005.

7. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at http://www.discoveringmontana.com/dli/nur. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, 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 Board of Nursing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. 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 Board of Nursing administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdnur@mt.gov, 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.

10. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
KAREN POLLINGTON, RN, CHAIRMAN

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State January 3, 2005

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.207.402, regarding adoption of USPAP by reference	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 8, 2005, the Board of Real Estate Appraisers proposes to amend ARM 24.207.402, adoption of USPAP by reference.

2. The Department of Labor and Industry 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 Real Estate Appraisers no later than 5:00 p.m., on February 2, 2005, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrea@mt.gov.

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

24.207.402 ADOPTION OF USPAP BY REFERENCE (1) Upon review of the publication known as the Uniform Standards of the Professional Appraisal Practice (USPAP), published by the appraisal foundation, the board adopts and incorporates by reference the ~~2004~~ 2005 edition of USPAP. The board adopts and incorporates by reference the advisory opinions listed as an addendum to the USPAP publication, for the purpose of explaining and interpreting professional appraisal practice standards as required by 37-54-105, MCA.

(2) Upon review of the publication known as USPAP Frequently Asked Questions (USPAP FAQ), published by the appraisal foundation, the board adopts and incorporates by reference the ~~2004~~ 2005 edition of USPAP FAQ, for the purpose of explaining and interpreting the standards as provided by 37-54-105, MCA.

(3) and (4) remain the same.

AUTH: 37-54-105, MCA
IMP: 37-54-105, 37-54-403, MCA

REASON: The Board finds it is reasonably necessary to incorporate by reference the most current version of professional standards established by the appraisal standards

board of the Appraisal Foundation, as required by the provisions of 37-54-403, MCA. The Board also finds it reasonably necessary to incorporate by reference the various publications and documents by which the Board will use to explain and interpret the USPAP, as directed in 37-54-105(6), MCA. The Board finds that the USPAP are the generally accepted standards of professional appraisal practice.

4. Concerned persons may present their data, views or arguments concerning the proposed amendment in writing to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrea@mt.gov. Any comments must be received no later than 5:00 p.m., February 11, 2005.

5. If persons who are directly affected by the proposed amendment 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 Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrea@mt.gov to be received no later than 5:00 p.m., February 11, 2005.

6. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; 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 46 persons based on approximately 459 licensees.

7. The Board of Real Estate Appraisers maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. 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 Board of Real Estate Appraisers administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdrea@mt.gov; or may be made by completing a request form at any rules hearing held by the agency.

8. The Board of Real Estate Appraisers will meet in its offices on the fourth floor, 301 South Park Avenue, Helena,

Montana on March 8, 2005, to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendment. Members of the public are welcome to attend the meeting and listen to the Board's deliberations.

9. An electronic copy of this Notice of proposed amendment is available through the Department and Board's site on the World Wide Web at http://www.discoveringmontana.com/dli/rea, in the Rules Notices section. 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.

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State January 3, 2005.

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the proposed amendment of ARM 32.28.501, 32.28.503, 32.28.504, 32.28.609, 32.28.611, and 32.28.1808; and the proposed adoption of NEW RULE I pertaining to horse racing	)))))	NOTICE OF PROPOSED AMENDMENT AND ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 13, 2005, 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 February 3, 2005 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:

32.28.501 LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS (1) through (30) remain the same.

(31) Each track licensee shall promptly pay all purse money and all Montana breeders' ~~awards~~ bonuses, and in no event shall the payment of the winning purse be delayed more than five days after the licensee is notified to release the purse by the stewards. All other purse payments shall be made or made available within 48 hours after they have been earned.

(a) All breeders' ~~awards~~ bonuses shall be paid to the board within 14 days after they have been earned.

(b) The board shall distribute the breeders' bonuses to the appropriate breeders within 30 days of the end of the race meet in which the bonus was earned.

(32) through (47) remain the same.

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-101, 23-4-104, 23-4-202, MCA

REASON: The proposed amendments to ARM 32.28.501(31) are necessary to change the procedure and timing by which breeders' bonuses are paid out in this state. First, the current rule language stating the bonuses must be paid to the breeders within 14 days conflicts with 23-4-204, MCA, which

states the bonuses must be paid within 30 days of the end of the race meet. Secondly, the current rule language also allows the licensee tracks to pay breeders' bonuses directly to the breeders whose horses have earned the bonuses, which has not always been done in accordance with the timeframe established by statute. By requiring the licensee tracks to pay the breeder bonus award amounts directly to the board within 14 days of when they were earned, the Board will thus be able to calculate and pay the breeders' bonuses directly to the winning breeders within the 30 days after the end of the race meet, as is required by statute. Finally, the word "award" is being changed to "bonus" for more consistency in use of language between the statute and the rule.

32.28.503 OWNER AND BREEDER BONUSES (1) Under 23-4-204, MCA, the track licensee conducting a live race meet shall pay a sum equal to 10% of the first place money of every purse won by a horse bred in this state to the ~~breeder of the horse within 30 days of the end of the live race meet.~~ board for a breeder bonus, within 14 days after the bonus has been earned. The board shall distribute the breeders' bonuses to the appropriate breeders within 30 days of the end of the race meet in which the bonus was earned. Only the money contributed by the track licensee conducting the live race meet may be considered in computing the breeder bonus.

(2) The track licensee conducting a live race meet shall pay a sum equal to 10% of the first place money of every purse won by a horse bred in this state to the ~~owner of the horse within 30 days of the end of the live race meet.~~ board for an owners' bonus, within 14 days after the bonus has been earned. The board shall distribute the owners' bonuses to the appropriate owners within 30 days of the end of the race meet in which the bonus was earned. Only the money contributed by the track licensee conducting the live race meet may be considered in computing the owner bonus.

(3) remains the same.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-204, MCA

REASON: The proposed amendments to ARM 32.28.503 are necessary to change the procedure and timing by which breeder and owner bonuses are paid out in this state. See the statement of reasonable necessity for ARM 32.28.501, above.

32.28.504 JOCKEY INCENTIVE AWARD PROGRAM (1) through (4) remain the same.

(5) A licensed jockey must ride in at least 20 races in Montana, and must ride at all but one of the licensed tracks in a live race meet season, including riding at least 50% of the race days offered at each meet, in order to be eligible for participation in the jockey incentive award program.

(6) A licensed jockey meeting the 20 race minimum who is injured during the course of the current Montana live race

season may keep any current season points earned to the time of the injury. The injury must prohibit the jockey from riding in any racing jurisdiction during the remainder of the current Montana live race season.

(7) In the event at least 50% of the race days are cancelled at any track during the current Montana live race season, a jockey not meeting the requirements of (5) due to the cancellation(s) shall retain the jockey's points earned during the current Montana live race season, providing the jockey had been named on horses for the cancelled day(s).

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-204, MCA

REASON: The proposed amendments to ARM 32.28.504 are necessary to clarify some board requirements for participation in the jockey incentive award program. This program was first implemented during the 2003 live race season in Montana, and the ensuing two seasons' experiences have revealed situations which were not clearly addressed in the rule.

The proposed amendment to (5) is necessary to require each jockey to ride at least 50% of the offered race days at a particular live race meet to avoid the scenario of a jockey riding only one race day at a live race meet in order to meet the bare requirements of the rule, and then leaving the state.

The proposed addition of (6) is necessary to address situations of injury to jockeys. The amendment will clarify that if a jockey is injured during the course of the current live race season, the jockey may retain the jockey's points earned to that date as long as the injury is so severe it restricts the jockey from riding in any racing jurisdiction at all and the jockey has ridden the prerequisite 20 races. Current rule language did not address situations of jockey injury in the context of the jockey incentive award program.

The proposed addition of (7) is necessary to address situations where race days are cancelled by the track due to weather or other allowable reasons, and a jockey is thus not able to meet the rule requirements which state a jockey must ride at each live race meet in Montana save one. The amendment will clarify that if the jockey's failure to meet the requirements of riding at each live race meet in Montana is due to the track's actions in canceling race days, the jockey shall not be penalized by losing eligibility for the jockey incentive award program. The jockey must have been named on - or intending to ride certain horses - for the cancelled day(s).

32.28.609 STEWARDS (1) ~~Selection of stewards.~~ Stewards are selected as follows:

(a) The board shall maintain a listing of the licensed racing officials who have been qualified for the position of steward by the board, and the ~~selecting~~ selection of steward shall be made from such listing. There shall be three stewards to supervise each race meet. One steward shall be

~~appointed~~ hired by the board to be the presiding steward. ~~He or she shall be compensated by the board. One~~ Two stewards shall be ~~assigned~~ contracted by the board to be ~~the~~ deputy state stewards. ~~He or she shall be compensated by the association at an amount approved by the board. One steward shall be appointed by the association and compensated by the association.~~ The three stewards so selected will comprise the board of stewards for the race meeting. All stewards shall be compensated by the board at an amount set by the board. The selection of stewards for a race meeting shall be made as soon as possible after the allocation of dates for a racing meet, but in no event later than 30 days before the race meeting.

(b) through (28) remain the same.

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, 23-4-201, 23-4-202, 23-4-301, MCA

REASON: The proposed amendment to ARM 32.28.609 is necessary to change the entity responsible for compensation for the three stewards at each live race meet in Montana. The current rule language states the board shall compensate only the presiding, or state steward, while the association (licensee) shall compensate both the deputy state steward and the third steward at an amount approved by the board. The board has determined this method may give rise to the appearance of a conflict of interest, which may interfere with the deputy stewards' ability to remain neutral and answerable only to the board in making critical race judgments. By requiring all compensation of stewards to be made by the board only, the stewards may remain outside any influence by the track licensee.

Additionally, the board is cognizant of all tracks' increasing financial difficulties in funding operations of live race meets in Montana. By removing the requirement that the tracks pay compensation to two of the board's official stewards, the tracks may be able to use that money to finance other critical elements required to operate an increasingly expensive live race meet and retain live horse racing in Montana.

32.28.611 VETERINARIAN: OFFICIAL (1) The board shall contract with or hire persons licensed as veterinarians in Montana to perform the duties of official veterinarians at horse racing meets. Contracts (or hires) shall be upon such terms as the board and the veterinarians may mutually agree and may contain differing rates of compensation based upon the experience of the veterinarian. ~~Each track shall reimburse the board~~ The board shall compensate the veterinarian(s) for ~~the~~ official veterinarian services.

(2) through (4) remain the same.

AUTH: Sec. 23-4-202, MCA
IMP: Sec. 23-4-201, MCA

REASON: The proposed amendment to ARM 32.28.611 is necessary to change the entity responsible for compensation for the official veterinarian at each live race meet in Montana. The current rule language states the tracks shall reimburse the board for the vet's compensation. The board has determined this method may give rise to the appearance of a conflict of interest, which may interfere with the official veterinarian's ability to remain neutral and answerable only to the board in making critical race judgments. See also the statement of reasonable necessity for ARM 32.28.609, above.

32.28.1808 SUPERFECTA (1) through (6)(a) remain the same.

(b) no licensee shall offer superfecta wagering on any race when there are less than ~~eight~~ six horses scheduled to start, at draw time. In no event will superfecta wagering be permitted on a race in which less than six horses ~~go to the post~~ start;

(c) remains the same.

(d) no more than ~~two~~ three superfecta races may be offered on any single day at any race meet.

(7) through (7)(g) remain the same.

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-104, 23-4-202, 23-4-301, MCA

REASON: The proposed amendments to ARM 32.28.1808(6) are necessary to change the size of fields required for declaring a race eligible for "superfecta" wagers, as well as changing the number of races per race day that may offer "superfecta" wagering. The Board noted that as fewer and fewer horses participate in racing in Montana, it has become increasingly more difficult for racing secretaries to find eight horse fields for a racing card. Therefore, by reducing the number of horses which must be scheduled to start from the current rule language of "eight" to "six," more racing secretaries will be able to allow popular superfecta wagering on races in Montana. Additional superfecta wagering races would be beneficial for tracks in Montana.

The proposed amendment is also necessary to change the requirement that six horses must "go to the post," to six horses must "start." The Board noted the current rule language of "go to the post" does not address the situation where a horse actually goes to the post, but must then be scratched at the gate due to injury or misbehavior. If this were to happen, the current rule language would allow superfecta wagering on a race in which only five horses actually participate, which is not the intention of the Board. The proposed amendment will clarify that six horses must be scheduled to start, and all six must actually start the race to allow superfecta wagering.

The proposed amendment to (6)(d) is also necessary to allow three superfecta wagering races per day at each track for the benefit of the tracks, as this is a popular form of

wagering that creates increased handle and revenue for the tracks.

4. The rule proposed to be adopted provides as follows:

NEW RULE I PURSE DISBURSEMENT FORMULA (1) Prior to the beginning of the live racing season, all funds collected under 23-4-202, MCA, to the board's state special revenue account, including percentages collected on live handle, winter simulcast handle, and summer simulcast handle, shall be distributed by the board to each live race meet licensed by the board. All live handle percentages and on-site simulcast funds shall be held separate for the benefit of each live track licensee until distribution. Non-site simulcast funds shall be distributed by percentages based on amount of handle by the individual track licensee during the prior live race season. The licensees must use all funds distributed by the board for track purses except for the percentage amount set by the board for track operations or other purposes approved by the board.

(2) The track licensees shall pay purses during the live race meet from funds distributed by the board by expending:

(a) first, any carryover from the previous year;

(b) second, winter simulcast funds designated for purses;

(c) third, all live handle funds; and

(d) fourth, all summer simulcast funds designated for purses if available to the track under (4).

(3) All live handle funds and winter simulcast funds must be paid out as purses during each current live race meet.

(4) Summer simulcast funds, or any portion thereof, may be carried over for use by the track licensee during the following season's live race meet if doing so will not cause current live race meet purses to fall below the previous year's purse structure. Any summer simulcast funds not used by a track licensee for the current live race meet will be retained by the board for the exclusive use of the designated track licensee, and may be carried over to be paid to the track licensee by the board prior to the following season's live race meet.

(5) Any funds retained by the board as summer simulcast carryover will be forfeited to the board if the track licensee does not apply for or is not granted dates for the following live race season in Montana. The forfeited funds shall be distributed to the remaining live race track licensees by percentage based on amount of handle during the prior live race season.

AUTH: Sec. 23-4-104, 23-4-202, MCA
IMP: Sec. 23-4-302, 23-4-304, MCA

REASON: The proposed new rule is necessary to establish the procedures by which funds collected by the board under statutes known colloquially as "SB 65" will be collected and

later distributed by the board to the race track licensees for operations and purses. The board has received frequent questions on timing of distribution of the funds, allowable payouts, and carryover amounts since SB 65 was passed in 1997. Therefore, the board finds it necessary to implement this rule to clarify the various funds known as carryover, live handle, winter simulcast and summer simulcast. The proposed new rule will clarify the board requirement that the funds shall be expended by the track licensees in the following order: 1. carryover, 2. winter simulcast, 3. live handle, and 4. summer simulcast.

The most frequent questions concern use of summer simulcast funds and allowable carryover of funds to the following race season. The proposed new rule will clarify that each track licensee may choose whether to use the summer simulcast amounts for the current live race season, or to carry it over to the following race season. The proposed new rule will also clarify that no carryover amount maximum has been set by the board at this time.

Finally, the board is aware that track licensees for whom the board is holding carryover amounts may potentially not apply for or be granted race dates for a particular race season. The proposed new rule will therefore establish that any funds held by the board for carryover for a track licensee who does not run in the following live season will be forfeited to the board for distribution to those track licensees that will be running a live race meet during a current season.

5. Concerned persons may present their data, views or arguments about the proposed amendment and adoption 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., February 10, 2005.

6. If persons who are directly affected by the proposed amendment and adoption 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., February 10, 2005.

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 on the 1,300 licensees in Montana.

8. An electronic copy of this proposal notice is available through the department's web 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 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 January 3, 2005

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of new rule I and the amendment of ARM 37.86.805 and 37.86.1807 pertaining to Medicaid reimbursement rates for ambulance services, hearing aids and durable medical equipment	))))))	NOTICE OF PROPOSED ADOPTION AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 12, 2005, the Department of Public Health and Human Services proposes to adopt and 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 January 31, 2005, 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 adopted provides as follows:

RULE I AMBULANCE SERVICES, QUALIFIED RATE ADJUSTMENT, PAYMENT ELIGIBILITY AND COMPUTATION (1) Eligible Montana ambulance providers may receive a qualified rate adjustment (QRA) from the department for ambulance services. Eligible providers are ambulance service providers that are either owned or operated by a local government unit.

(2) For an eligible provider to receive a QRA payment, the following conditions must be met:

(a) local government funds must be transferred in accordance with the contract required by (2)(d);

(b) the funds must be certified by the city or county treasurer, or an authorized local government official, as an intergovernmental transfer of public funds that qualifies as a payment of services eligible for federal financial participation (FFP, the federal government's share of a state's expenditures under the medicaid program) in accordance with 42 CFR 433.51 (2004);

(c) the provider must be in compliance with a signed, written contract with the department; and

(d) the written contract covering the requirements for the QRA payment must be executed prior to the issuance of the QRA payment. A retroactive effective date on the written agreement

will not be allowed.

(3) To be eligible for FFP, the local government funds cannot be federal funds unless the federal funds are authorized by federal law to be used to match other federal funds.

(4) The QRA payment will be computed separately for all eligible ambulance providers using the following formula:

QRA payment = C x D x FMAP

(a) For the purposes of calculating the QRA payment amount, the following definitions apply:

(i) "C" represents the number of the provider's medicaid paid claims during the prior state fiscal year;

(ii) "D" represents the difference between the medicare and medicaid allowed amount per the healthcare common procedure coding system (HCPCS); and

(iii) "FMAP" represents the federal medical assistance percentage (FMAP) in effect during the prior state fiscal year. This percentage is the amount of federal participating matching funds for payment of Montana medicaid program services. The methodology for determining this percentage is set forth in 42 USC 1396b(a) (2004). The department adopts and incorporates by reference the methodology set out in 42 USC 1396b(a) (2004). A copy of that statute may be obtained from the Department of Public Health and Human Services, Health Resources Division, P.O. Box 202951, Helena, MT 59620-2951.

(5) The QRA is subject to the following conditions:

(a) the eligible ambulance provider's local government funds must be received by the department before it will disburse the QRA payment to the provider;

(b) information submitted from the eligible ambulance provider, the local medicare fiscal intermediary, and the Montana medicaid paid claims database will be used for calculations, utilizing data from the most recent state fiscal year with completed medicaid paid claims data;

(c) the limited situations where there is no medicare HCPCS code or fee schedule for the ambulance service, the billed charges from the provider will be used in the computation; and

(d) the ambulance provider is not allowed to bill medicaid more than it bills private payers and other insurers.

(6) The QRA payment is subject to the restrictions imposed by federal law and to the availability of sufficient local government, state and federal funding.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 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.

37.86.805 HEARING AID SERVICES, REIMBURSEMENT (1) The department will pay the lower of the following for covered hearing aid services and items:

(a) the provider's reasonable usual and customary charge for the service or item;

(b) the amount specified for the particular service or item in the department's fee schedule. The department ~~hereby~~ adopts and incorporates by reference the department's fee schedule dated ~~July 2003~~ January 2005 which sets forth the reimbursement rates for hearing aid services ~~and other medicaid services~~. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, ~~Health Policy and Services Child and Adult~~ Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) The provider may bill medicaid for a dispensing fee, as specified in the fee schedule in (1)(b), in addition to the invoice price for the purchase of a hearing aid or aids. The dispensing fee covers and includes the initial ordering, fitting, orientation, counseling, two return visits for the services listed, and the insurance for loss or damages covered under a one year warranty.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-113, MCA

37.86.1807 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) Providers must bill for prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair and services using the procedure codes and modifiers set forth~~,~~ and according to the definitions contained~~,~~ in the ~~health care financing administration's~~ centers for medicare and medicaid services' (CMS) healthcare common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the Department of Public Health and Human Services, ~~Child and Adult~~ Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) Prosthetic devices, durable medical equipment and medical supplies shall be reimbursed in accordance with the department's fee schedule dated ~~July 2003~~ January 2005, which is adopted and incorporated by reference. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, ~~Child and Adult~~ Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) The department's fee schedule, referred to in ARM 37.86.1806(1), for items other than wheelchairs and items billed under generic or miscellaneous codes as described in (1), shall include fees set and maintained according to the following methodology:

(a) 100% of the medicare region D allowable fee;

(b) Except as provided in (4), for all items for which no medicare allowable fee is available, the department's fee schedule amount shall be 75% of the provider's usual and customary charge, until a reasonable fee is established through a pricing cluster as described in (3)(b)(ii).

(i) For purposes of (3)(b) and (4), the amount of the provider's usual and customary charge may not exceed the

reasonable charge usually and customarily charged by the provider to all payers.

(A) The charge will be considered reasonable if less than or equal to the manufacturer's suggested list price.

(B) For items without a manufacturer's suggested list price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount.

(C) For items that are custom fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all medicaid providers by more than 20%.

(D) For rental items, the reasonable monthly charge may not exceed a percentage of the reasonable purchase charge, as specified in ARM 37.86.1806(3).

(ii) For the purposes of (3)(b), a pricing cluster consists of product retail price lists from manufacturers and distributors. Such pricing is used to compare all provider billed charges for an item/service billed under a specific procedure code. The average charge from a 12-month period is considered reasonable if equal to or less than the average retail price of the pricing cluster. If the average charge is considered reasonable, a permanent fee will be set at 75% of the reasonable charge.

(iii) Items having no product retail list price, such as items customized by the provider, will be reimbursed at 75% of the provider's usual and customary charge as defined in (3)(b)(i).

(4) The department's fee schedule, referred to in ARM 37.86.1806(1), for all wheelchairs and items billed under generic or miscellaneous codes as described in (1) shall be 75% of the provider's usual and customary charge as defined in (3)(b)(i).

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-113, MCA

4. The Department of Public Health and Human Services proposes to adopt a new rule allowing a qualified rate adjustment for ambulances owned or operated by local governments. The rule will have a retroactive effective date of July 1, 2004. The department also proposes to amend ARM 37.86.805 and 37.86.1807 to update the fee schedules incorporated by reference in these rules. The currently incorporated fee schedules are dated July 1, 2003. The fee schedules to be incorporated will be dated January 1, 2005.

New Rule I

The new rule will allow the department to accept intergovernmental transfers from local governments. This payment qualifies as an intergovernmental transfer of state financial participation and will qualify for federal financial participation (FFP) at the federal medicaid assistance

percentage (FMAP) rate. Making the intergovernmental transfer will increase federal funds received in Montana to pay for ambulance services paid for by Medicaid.

Ambulance providers owned or operated by local government units are eligible. These providers will receive the qualified rate adjustment (QRA) because they maintain access to medically necessary ambulance service throughout Montana.

The department will distribute the additional federal funds through an annual payment to eligible ambulance providers. The payment will be based on the difference between the Medicare and the Medicaid allowed amounts and will be paid on submitted Medicaid paid claims. This number is the equivalent of the medicaid paid utilization rate. The department will retain no funds collected from the local governments.

This rule change is necessary because the State of Montana wants to maximize the amount of money accounted for as state financial participation. Federal Medicaid funding is based on state financial participation.

The department projects that new rule I will affect approximately 51 eligible ambulance providers. Providers will receive approximately $188,000 in additional federal funding.

ARM 37.86.805(1)(b)

This rule currently incorporates by reference the department's July 1, 2003, fee schedule for hearing aid devices. The rule change will incorporate by reference the fee schedule to be used as of January 1, 2005. The erroneous reference to "and other medicaid services" is being removed from this rule because it is incorrect. The fee schedule referred to in this rule has always been for hearing aid devices only.

The department's fee schedules are based on the nationwide medical coding system used by all insurance providers, including Medicaid and Medicare. The department's revised fee schedule as of January 1, 2005, includes coding revisions to the national medical coding system, plus fees for new items/services. It also removes discontinued procedure codes. The change is necessary in order to incorporate the new codes and the other changes, thereby coordinating with the nationwide coding system.

The department projects that the updated fee schedule will affect approximately 29 providers. This rule change has no fiscal impact.

ARM 37.86.1807(2)

This rule currently incorporates by reference the department's July 1, 2003, fee schedule for prosthetic devices, durable medical equipment, and medical supplies. The rule change will incorporate by reference the fee schedule to be used as of January 1, 2005.

The department's fee schedules are based on the nationwide medical coding system used by all insurance providers, including Medicaid and Medicare. The department's revised fee schedule as of January 1, 2005, as mentioned above in regard to ARM 37.86.805, includes coding revisions and fees for new services/items and removes discontinued procedure codes. The change is necessary to keep the coding system synchronized with the rest of the country.

The department projects that the updated fee schedule will affect approximately 560 providers. This rule change has no fiscal impact.

5. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Gwen Knight, 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 February 10, 2005. 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 or 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 Gwen Knight, 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 February 10, 2005.

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 three based on the 29 individuals or entities affected by rules covering hearing aid providers.

Russ Cater
Rule Reviewer

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State December 29, 2004.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rule I and the amendment of ARM 37.86.4401, 37.86.4406, 37.86.4407, 37.86.4412 and 37.86.4413 pertaining to reimbursement of rural health clinics and federally qualified health centers	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On February 2, 2005, 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 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 January 24, 2005, 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 adopted provides as follows:

RULE I RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, VISITS AND ENCOUNTERS (1) For purposes of this subchapter, a face-to-face encounter between a clinic or center patient and a clinic or center health professional for the purpose of providing RHC or FQHC core or other ambulatory services constitutes a single visit.

(2) Encounters that take place on the same day and at a single location constitute a single visit, although the encounters were:

(a) with more than one clinic or center health professional; or

(b) multiple encounters with the same clinic or center health professionals.

(3) Each additional encounter with clinic or center health professionals that takes place on the same day as a medical visit to the same clinic or center constitutes an additional visit if, after the first encounter:

(a) the patient suffers an additional illness or injury

requiring additional diagnosis or treatment;

(b) the patient has a mental health visit consisting of one or more mental health encounters; or

(c) the patient has a dental visit consisting of one or more dental encounters.

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 rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.4401 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, DEFINITIONS In this subchapter the following definitions apply:

(1) and (2) remain the same.

(3) "Federally qualified health center (FQHC)" means an entity which is a federally ~~-~~qualified health center as defined in 42 USC 1396d(l)(2)(B) (~~1995~~ 2003 Supp.). For purposes of defining "federally qualified health center" the department ~~hereby~~ adopts and incorporates ~~herein~~ by reference 42 USC 1396d(l)(2)(B) (~~1995~~ 2003 Supp.), which is a federal statute defining "federally qualified health center" for purposes of the medicaid program. A copy of the cited statute is available upon request from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Health Resources Division, Hospital and Clinical Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(4) "FQHC core services" means the FQHC ambulatory services defined in 42 USC 1396d(l)(2)(A) and described in 42 USC 1395x(aa)(1). For purposes of defining and describing FQHC core services, the department ~~hereby~~ adopts and incorporates ~~herein~~ by reference 42 USC 1396d(l)(2)(A) and 42 USC 1395x(aa)(1) (~~1995~~ 2003 Supp.). The cited statutes are federal medicaid and medicare statutes defining certain FQHC services for purposes of the medicaid and medicare programs. Copies of the cited statutes are available upon request from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Health Resources Division, Hospital and Clinical Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(5) and (6) remain the same.

(7) "Increase or decrease in the scope of service" means the addition of or elimination of a category of service to the clinic or center or an increase or decrease in the intensity of a category of service. The increase or decrease in the scope of service must reasonably be expected to last at least one year.

(8) remains the same.

(9) "Intensity of service" means the ~~increase or decrease in the cost of a category of service due to a change in the~~ level of medical care provided to the population served by the clinic or center ~~that may be reasonably expected to span at least 1 year~~.

(10) through (16) remain the same.

(17) "Visit" means a face-to-face encounter between a clinic or center patient and a clinic or center health professional for the purpose of providing RHC or FQHC core or other ambulatory services. ~~Encounters with more than one clinic or center health professional, and multiple encounters with the same clinic or center health professional, that take place on the same day and at a single location constitute a single visit, except when after the first encounter, the patient suffers an additional illness or injury requiring additional diagnosis or treatment, or the patient has a mental health visit, dental visit or both with clinic or center health professionals that take place on the same day as a medical visit to the same clinic or center.~~ For purposes of this subchapter, the terms of [RULE I] must be used to determine whether an encounter or series of encounters is one or more visits.

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

37.86.4406 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, SERVICE REQUIREMENTS (1) The Montana medicaid program will cover and reimburse under the RHC or FQHC ~~services~~ programs only those services that are RHC services or FQHC services as defined in ARM 37.86.4401 and subject to the provisions of this subchapter.

(2) through (5)(f) remain the same.

(6) A provider must notify the department, in writing, of an ~~addition or elimination of a category of service~~ increase or decrease in the scope of service offered by the RHC or FQHC to medicaid recipients. ~~The~~ Upon the request of a provider, the department will determine if a change qualifies as an increase or decrease in the ~~intensity~~ scope of ~~services upon request of a provider~~ service, and if so, the amount and effective date of any rate increase or decrease.

(a) As a condition of approval, the department may require the provider to submit documentation and information necessary to demonstrate compliance with requirements applicable to the category of service or documentation and information necessary to determine the ~~cost~~ increase or decrease in the reimbursement rate due to an increase or decrease in the scope of service including any increase or decrease in the costs of the service and any increase or decrease in the number of visits.

(b) Medicaid coverage and reimbursement of an additional category of service will not be available to a provider unless department approval was requested prior to provision of the services and unless the services comply with all applicable requirements. Department approval of any increase in the rate of reimbursement due to the addition or elimination of a category of service will be from ~~date of notification~~ the date the department was notified by the provider. Any decrease in the rate of reimbursement due to ~~an~~ the addition or elimination of a category of service shall be effective from the date ~~of notification~~ the department was notified by the provider or the

date the department determines the category of service was added or eliminated, whichever is first.

(c) Any increase ~~or decrease~~ in the rate of reimbursement due to ~~a change in the intensity~~ an increase or decrease in the intensity of ~~services~~ service shall be from the date of notification by the provider to the department. Any decrease in the rate of reimbursement due to an increase or decrease in the intensity of service shall be from the date the department was notified by the provider or the date the department determines the increase or decrease in the intensity of services occurred, whichever is first.

(d) remains the same.

(7) If clinic or center services are provided in more than one location, each location is independently considered for approval as an RHC or FQHC medicaid provider, unless prior approval was granted by the department, to operate both locations under one provider number. To be considered for operation under one provider number, both sites must share medical staff, office staff or administrative staff. The provider must notify the department of this change in status as provided in (6).

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

37.86.4407 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, RECORD KEEPING AND REPORTS (1) remains the same.

(2) A provider must make and maintain adequate financial and statistical records in accordance with generally accepted accounting principles, as defined by the American institute of certified public accountants. The provider's records must be sufficient to allow the department and its agents to determine payment for the RHC or FQHC services provided to medicaid recipients and to provide a record that ~~is auditable through the application of~~ may be audited using generally accepted auditing standards. Such records must be maintained for a period of ~~6~~ six years, ~~3~~ three months after a cost report is filed with respect to the period covered by such records or until such cost report is finally settled, whichever is later.

(3) remains the same.

(4) Upon failure or refusal of the provider to make available and allow access to such records, or to report ~~a change~~ an increase or decrease in scope of services, the department may recover in full all payments made to the provider during the reporting period to which such records relate and may suspend any further payments to the provider until such time as the provider fully complies with this rule.

(5) remains the same.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.86.4412 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED

HEALTH CENTERS, REIMBURSEMENT (1) through (3) remain the same.

~~(4) The payment for RHCs and FQHCs will be as described in section 1902(a)(2)(B) and (C) of the Social Security Act 42 USC 1396a. For services furnished on or after January 1, 2001, payment for services for an RHC or FQHC shall be calculated on a per visit basis. This payment shall be equal to 100% of the average of the allowable costs of the RHC or FQHC furnishing such services during the RHC's or FQHC's fiscal years 1999 and 2000 which are reasonable and related to the cost of furnishing such services. This rate will be adjusted to take into account any increase or decrease in the scope of such services, as determined by the department, furnished by the RHC or FQHC during fiscal year 2001. Reasonableness shall be determined using the same methodology used under section 1833(a)(3) of the Social Security Act and using medicare allowable cost principles as set forth in 42 CFR 405.2468, HCFA manual provisions applicable to RHCs or FQHCs, including the Medicare Provider Reimbursement Manual, HCFA Pub. 15 and HCFA Pub. 27. The RHC or FQHC shall report any increase or decrease in the scope of services for fiscal year 2001 to date by notifying the department within 60 days of receipt of their estimated prospective payment worksheet from the department. Other changes through the end of calendar year 2001 shall be as in ARM 37.86.4406(6).~~

~~(a) The formula for calculating this base per visit rate is: the total cost of core and other ambulatory services for fiscal year 1999 and fiscal year 2000 divided by the total core and other ambulatory visits for fiscal year 1999 and fiscal year 2000, as reported on the providers filed medicaid fiscal year 1999 and fiscal year 2000 cost reports. This base cost per visit rate may be adjusted by a percentage of the total cost increase/decrease due to changes in scopes of services for fiscal year 2001 to date.~~

~~(b) If the provider reports only costs of other ambulatory services and not visits on their fiscal year 1999 and/or fiscal year 2000 cost reports, the costs of the other ambulatory services shall be removed from the calculation, however, the provider may report the number of visits and have the costs and visits added back into the base cost per visit rate by notifying the department within 60 days of receipt of their estimated prospective payment worksheet from the department.~~

~~(5) The department shall reimburse the clinic or center retroactive to the effective date of January 1, 2001.~~

~~(6)~~ (4) On January ~~first~~ 1 of each succeeding calendar year, the rate ~~shall~~ for the preceding year must be adjusted by the percentage increase in the medicare economic index (MEI) applicable to primary care services for that calendar year.

~~(7)~~ (5) The department will reimburse the RHC or FQHC for the rate change in ~~(7)~~ (4) retroactive to the effective date of January ~~first~~ 1 of the calendar year, beginning with January 1, 2002.

(6) For clinics or centers that had their initial medicaid prospective system base visit rate calculated in 2001 or starting with the third fiscal year (for "new" clinics or

centers as defined at ARM 37.86.4413), the prospective payment per visit rate may be adjusted to take into account any increase or decrease in the scope of service.

(a) The department will determine the new rate according to the following formula:

$$NR = \frac{(R \times PV) + C}{(PV + CV)}$$

(i) "NR" represents the new reimbursement rate adjusted for the increase or decrease in the scope of service;

(ii) "R" represents the present outpatient prospective payment system (OPPS) medicaid rate;

(iii) "PV" represents the present number of total visits which is the total number of visits for the RHC or FQHC during the 12-month time period prior to the change in scope of service;

(iv) "C" represents the expected change in costs due to the change in scope of service; and

(v) "CV" represents the expected change in the number of visits due to the change in scope of service.

~~(8) The prospective payment per visit rate may be adjusted by a percentage of the total cost increase or decrease due to changes in scope of services as reported in ARM 37.86.4406(6).~~

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113, MCA

37.86.4413 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, ESTABLISHMENT OF INITIAL PAYMENT FOR NEW CLINICS OR CENTERS (1) and (2) remain the same.

(3) At the end of the RHC's or FQHC's first two fiscal years, a new per visit rate shall be established that is equal to 100% of the allowable costs of the RHC or FQHC furnishing such services during the RHC's or FQHC's first two fiscal years which are reasonable and related to the cost of furnishing such services. The provider must submit to the department or its agent the costs and visits for the RHC or FQHC for the reporting period in the form and detail required by the department and such other information as the department may require to establish a rate.

(a) The formula for calculating this new base per visit rate is~~:~~ the total cost of core and other ambulatory services for the first two fiscal years divided by the total core and other ambulatory visits for the first two fiscal years. This base cost per visit rate may be adjusted ~~by a percentage of the total cost increase/decrease due to changes in scopes of services~~ to take into account any increase or decrease in the scope of service as provided in ARM 37.86.4412.

(b) remains the same.

(4) Reimbursement for the third year forward shall be as in ARM 37.86.4406~~(6)~~ and 37.86.4412~~(7) and (8)~~.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

4. The Department of Public Health and Human Services (the Department) proposes the adoption of new Rule I and the amendment of ARM 37.86.4401, 37.86.4406, 37.86.4407, 37.86.4412 and 37.86.4413 pertaining to Medicaid reimbursement of Rural Health Clinic (RHC) and Federally Qualified Health Center (FQHC) services. The Department previously proposed many of these same amendments in Montana Administrative Register (MAR) notice number 37-315 published February 12, 2004 at 2004 MAR page 245 issue number 3. After it received public comment, the Department began a series of revisions and worked closely with representatives of RHC and FQHC clinics to develop the text proposed in this notice. The process took longer than the six months allowed under 2-4-305(7), Montana Code Annotated (MCA) to publish a notice of adoption after the publishing of notice of a proposed amendment. Therefore, it is necessary to publish this notice of public hearing on the revised proposal of adoption and amendment.

The proposed amendments are necessary to clarify the methodology used by the Department to increase or decrease the per visit reimbursement rate when there is an increase or decrease in the scope of RHC and FQHC services. Some providers have argued, and the Board of Public Assistance has agreed that the terms of ARM 37.86.4412 as amended October 12, 2001 prevent the Department from considering increases or decreases in the number of visits when it increases or decreases rates due to an increase or decrease in the scope of an RHC or FQHC provider's services. The Department believed its use of the term "per visit rate" was sufficiently clear to allow it to consider increases or decreases in the number of visits when a service is added or deleted, but recognizes that the rule could be more specific.

Therefore, the Department is publishing this proposal to specify that increases or decreases in the estimated number of visits must be considered along with estimated cost increases or decreases whenever there is an increase or decrease in the scope of an RHC or FQHC provider's services. For purposes of reimbursement, the Department is proposing that the term "increase or decrease in the scope of service" include increases or decreases in intensity of service as well as addition or elimination of a category of service. This methodology should allow reimbursement to remain equal to 100% of the costs of furnishing the services.

The "Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000" (BIPA), Public Law No. 106-554, required states to adopt a prospective payment system for reimbursement of RHC and FQHC services. The Department did so in rules effective January 1, 2001. The per visit rate for existing providers was based on 100% of average costs and total core and other ambulatory visits reported by the center or clinic for years 1999 and 2000 as required by 42 US 1396a(aa)(2). The

result was a minimum medicaid per visit rate that reflected the average costs of providing services. It was to be increased annually by the percentage increase in the Medicare economic index (MEI) to compensate for monetary inflation. The prospective payment per visit rate could be adjusted by a percentage of the total cost increase or decrease due to increases or decreases in the scope of service. The Department is taking this opportunity to delete the methodology it used to determine RHC and FQHC prospective per diem reimbursement for services provided in fiscal year 2001 only.

The Department is taking this opportunity to update its address to reflect a recent reorganization of the division responsible for administering Medicaid programs in Montana. The Department is also taking this opportunity to update references to the United States Code in these rules. The Department proposes the correction of minor typographical and style errors. No substantive changes are intended as a result of the updates, corrections or deletion.

The effects of the proposed new rule and proposed amendments on existing rules are described rule-by-rule below. The Department's rationale for proposing the new rule and amendments is explained in conjunction with the rule or rules that would be affected.

RULE I

The Department is proposing the adoption of Rule I to move the substantive provisions of ARM 37.86.4401(17) out of the definitions rule and into a separate rule. This was done simply to make the provisions easier to find and read. The Department does not intend any change of policy related to RHC and FQHC visits or encounters.

ARM 37.86.4401

The Department is proposing that an "increase or decrease in the scope of service" must be expected to last at least one year in order to qualify for an increase or decrease in the per diem prospective payment rate. This would be accomplished by moving a similar provision from the definition of the term "intensity" to the definition of "increase or decrease in the scope of service". Under the proposed amendments to ARM 37.86.4406 and 37.86.4412, an increase or decrease in the scope of service would include increases or decreases in the intensity of service.

The definition of the term "intensity" would be simplified so that it would more closely approximate the ordinary meaning of the term. This would be consistent with the Department's proposal that "increase or decrease in the scope of service" be used as a general term to describe increases or decreases in intensity of services as well as addition or elimination of

categories of service.

The Department proposes substituting "increase" or "decrease" or both for the term "change" when it is used to refer to the scope or intensity of RHC or FQHC services. Substitution of the more specific terms should help to avoid confusion about the conditions under which an RHC or FQHC rate increase or decrease is appropriate.

The Department is taking this opportunity to update its address to reflect a recent reorganization of the division responsible for administering Medicaid programs in Montana. The Department is also taking this opportunity to update references to the United States Code in this rule.

ARM 37.86.4406

Amendments proposed for ARM 37.86.4406 would conform this rule governing RHC and FQHC service requirements to the revised definition of "increase or decrease in the scope of service" proposed in ARM 37.86.4401. Please refer to that discussion for more information. The Department's intent is to clarify the service requirements by making them easier to read. The Department does not intend the amendment to change the substantive policy.

The Department is also proposing a clarification of the language in ARM 37.86.4406 describing when it will consider a rate increase or decrease. When notified by a provider of an increase or decrease in the scope of service, the Department will determine (1) whether an "increase or decrease in the scope of service" has occurred, and (2) if so, the amount and effective date of any resulting rate increase or decrease.

The Department proposes more specific language to clarify the date of any rate increase or decrease resulting from an increase or decrease in the scope of service. If the result is an increase it will be effective on the date the provider notified the Department. If the result is a rate decrease, the effective date will be the date the Department determines a decrease in the scope of service occurred or the date the provider notified the Department, whichever is earlier.

ARM 37.86.4407

The Department proposes substituting "increase or decrease" for the term "change" in (4), conforming it to the revised definition of "increase or decrease in the scope of service" proposed in ARM 37.86.4401. Please refer to that discussion for more information. The Department's intent is to clarify the existing record keeping and reporting requirements by making them easier to read. The Department does not intend the amendment to change the substantive policy.

The Department is taking this opportunity to improve the grammar in ARM 37.86.4407(2) by replacing the phrase "is auditable through the application of" with "may be audited using" in the second sentence. The Department's intent is to clarify the existing record keeping requirements by making them easier to read. The Department does not intend the amendment to change the substantive policy.

ARM 37.86.4412

This rule, governing reimbursement of RHC and FQHC services, would be amended to specifically require the consideration of increases or decreases in the estimated number of visits whenever there is an increase or decrease in the scope of service. Some providers have argued, and the Board of Public Assistance has agreed that the terms of ARM 37.86.4412 as amended October 12, 2001 prevent the Department from considering increases or decreases in the number of visits when it increases or decreases rates due to increases or decreases in the scope of an RHC or FQHC provider's services. The Department believed its use of the term "per visit rate" was sufficiently clear to allow it to consider increases or decreases in the number of visits when a service is added or deleted, but now recognizes that the rule could have been more specific. The purpose of the proposed amendment is to eliminate ambiguity and to promote consistent interpretation and application of the rule. Accordingly, the Department is proposing the use of a formula utilizing standard mathematical notation.

The Department considered and rejected the alternative of keeping the text of the rule unchanged. The Department is concerned that in its current form the rule would continue to be misinterpreted, leading to continued controversy about the methodology for increasing or decreasing the reimbursement rate when there is an increase or decrease in the scope of service.

The Department is taking this opportunity to propose the deletion of obsolete ARM 37.86.4412(4) containing the methodology for determining RHC and FQHC prospective reimbursement rates for services provided in fiscal year 2001 only. It based the initial reimbursement rate on an average of costs for furnishing services during fiscal years 1999 and 2000 as required by section 1902(aa)(2) of the Social Security Act, 42 USC 1396a(aa)(2), BIPA section 702. BIPA and the terms of ARM 37.86.4412(4) limited application of the methodology to fiscal year 2001. The methodology was superseded by the current methodology in fiscal year 2002.

ARM 37.86.4413

The provisions of this rule governing reimbursement of startup RHC and FQHC providers would be amended to conform to the amendments as proposed in ARM 37.86.4412. For more information, please see the discussion of amendments proposed for that rule.

Cumulative fiscal impact and number of persons affected

A total of 61 RHC and FQHC facilities were enrolled Medicaid providers in Montana as of the date of publication of this notice. Together they receive a total of approximately $6.6 million in Medicaid reimbursement annually. Because the proposed new rule and proposed amendments are intended to clarify rather than change current Department reimbursement policy, no fiscal impact on state or federal funds and no material effect on Medicaid recipients, RHCs or FQHCs is anticipated. If the Department had accepted the Board of Public Assistance's interpretation of ARM 37.86.4412, total RHC and FQHC reimbursement would have increased because increases or decreases in costs could be considered, but increases or decreases in the number of visits could not. The Department believes such a rate structure would encourage RHCs and FQHCs to continuously see ways to increase the number of visits.

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 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 February 10, 2005. 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

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State December 29, 2004.

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

In the matter of the amendment of ARM 6.6.8501, 6.6.8505, 6.6.8507, and 6.6.8508; repeal of ARM 6.6.8506; and adoption of New Rules I through III, (ARM 6.6.8510, 6.6.8511 and 6.6.8512) relating to viatical settlement agreements	NOTICE OF AMENDMENT, REPEAL AND ADOPTION

TO: All Concerned Persons

1. On August 19, 2004, the State Auditor's Office published MAR Notice No. 6-149 relating to the public hearing on the viatical settlement agreements, at page 1877 of the 2004 Montana Administrative Register, issue no. 16.

2. On September 9, 2004, a public hearing was held in Helena, Montana, and members of the public spoke at the public hearing. In addition, a written comment was received prior to the closing of the comment period.

3. ARM 6.6.8501, 6.6.8505, 6.6.8507, and 6.6.8508 are amended as proposed but with the following changes, stricken material interlined, new material underlined:

6.6.8501 DEFINITIONS In addition to the definitions in 33-20-1302, MCA, the following definitions apply to this subchapter:

(1) "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell a life insurance policy or an interest in a life insurance policy pursuant to a viatical settlement contract or a viatical settlement purchase agreement.

(1) through (2) remain as proposed, but are renumbered (2) through (3).

~~(3)~~(4) "Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by ~~the viatical settlement provider~~ a physician or physicians considering medical records and appropriate experiential data. A physician making this determination must have a valid license to practice medicine or osteopathic medicine in this state or another state.

~~(4)~~(5) "Net death benefit" means the amount of the life insurance policy or certificate to be viaticated less any

outstanding debts or liens~~.~~ then owing to the insurer providing coverage under the subject life insurance policy.

(5) through (5)(a) remain as proposed, but are renumbered (6) through (6)(a).

(b) an insured's photograph or likeness;

(c) an insured's employer, employment status, social security number, unless the social security number is used by the insurer as a means of identifying the subject policy; or

(5)(d) remains as proposed, but is renumbered (6)(d).

~~(6)~~(7) "Terminally ill" means having an illness ~~or sickness~~ that can reasonably be expected to result in death ~~in~~ and having a life expectancy of 24 months or less.

AUTH: 33-1-313, 33-20-1315, MCA
IMP: 33-20-1302, MCA

COMMENT 1: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, questioned whether the word "mean" in the definition of "life expectancy" in proposed ARM 6.6.8501(4) referred to a mathematical average.

RESPONSE 1: The Department agrees that "mean" refers to a mathematical average.

COMMENT 2: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, suggested that a viatical settlement provider ordinarily would not determine an insured's life expectancy and therefore, the phrase "as determined by the viatical settlement provider" in the definition of "life expectancy" in proposed ARM 6.6.8501(4) would exclude estimates of life expectancy determined by the insured's physician or another physician qualified to make such a determination.

RESPONSE 2: The Department agrees that life expectancies are likely to be determined by physicians who are not employed by a viatical settlement provider. The words "physician or physicians" will replace the phrase "viatical settlement provider" in this definition and the definition further specifies that a physician making a life expectancy determination must be licensed in Montana or another state.

COMMENT 3: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, noted that the definition of "net death benefit" in ARM 6.6.8501(5) did not specify that the benefit should be reduced only by sums owed to the insurer.

RESPONSE 3: The Department agrees with the commenter that "net death benefit" should mean the amount of the policy less any debts owed to the insurer and added language suggested by the commenter to make this clear.

COMMENT 4: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, observed that some insurers use social security numbers as a means of identifying insurance policies. He suggested that language in the definition of "patient identifying information" in ARM 6.6.8501(6) that would limit use of a patient's social security number would be problematic in cases in which the insurer used a patient's social security number to refer to that person's insurance policy.

RESPONSE 4: The Department agrees that this could be a problem and added the commenter's language permitting uses of social security number where the insurer uses the number to identify a person's specific policy.

COMMENT 5: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, remarked that it would be beneficial to clarify how it would be determined that an individual had a terminal illness for the purpose of meeting the definition of the term in ARM 6.6.8501(7).

RESPONSE 5: The Department believes that a physician should determine whether a person is terminally ill. In order to ensure that this determination is made by a physician, this rule refers to the definition of life expectancy in ARM 6.6.8501(4) which mandates that a life expectancy must be determined by a physician with a license to practice medicine.

COMMENT 6: The commenter, a representative of the American Council of Life Insurers, noted that "chronically ill" was defined in ARM 6.6.8501 but not used elsewhere in the rules.

RESPONSE 6: After reviewing laws in other states, the Department determined that chronically ill individuals who were not terminally ill were, in some states, given additional protection in the rules quantifying standards for reasonable payments under viatical settlement contracts. In order to protect chronically ill viators, the department believes it is necessary to set a minimum payment of 30% for chronically ill viators, similar to the approach used in Washington. This approach was incorporated in ARM 6.6.8507, and therefore, the definition of "chronically ill" in ARM 6.6.8501 will be needed.

COMMENT 7: The commenter, a representative of the American Council of Life Insurers, suggested that the definition of "patient identifying information" in ARM 6.6.8501 be changed to clearly indicate that the word "patient" referred to the insured.

RESPONSE 7: The department agrees with the commenter and proposed adding the words "an insured's" where necessary to make this clarification.

COMMENT 8: Two commenters suggested that the term "advertising" be defined in ARM 6.6.8501 and suggested adding a number of substantive provisions governing advertising of viatical settlement contracts as the National Association of Insurance Commissioners' model rule contains substantive provisions regulating advertising.

RESPONSE 8: The Department has not, in this rulemaking, suggested adopting the model provisions regulating advertising as these provisions are still under consideration by the department and their adoption may be proposed in a future rulemaking. Adding substantive provisions governing advertising at this time and without giving proper notice would violate the Montana Administrative Procedure Act, and consequently, the Department will forego suggestions to broadly expand regulation of advertising in the manner proposed. However, the rules proposed in this rulemaking do make reference to advertising, and therefore, a definition of the term may be useful. The department agrees with the commenters that incorporation of the National Association of Insurance Commissioners' model definition of advertising in ARM 6.6.8501 is appropriate at this time.

COMMENT 9: Two commenters supported a change in the definition of "viatical settlement broker" to be placed in ARM 6.6.8501 that would allow licensed life insurance producers to become viatical settlement brokers through a simplified process.

RESPONSE 9: The Department has been studying the issue and is preparing to address it in a separate rulemaking, but no change to viatical settlement broker licensing was proposed in this notice of proposed rulemaking and the Department is concerned that changing the definition in the manner suggested by the commenters would be a violation of the Montana Administrative Procedure Act.

6.6.8505 DISCLOSURE (1) A disclosure document containing the disclosures required in 33-20-1311, MCA, and this rule, shall be provided ~~before or concurrent with taking~~ when an application for a viatical settlement contract is taken.

(2) The disclosure document must contain the following language:

(a) "All medical, financial, or personal information solicited or obtained by a viatical settlement ~~company~~ provider or viatical settlement broker about a viator and insured, including the viator and insured's identity or the identity of family members~~, a spouse or a significant other,~~ is confidential."

(3) The medical, financial, or personal information solicited or obtained by a viatical settlement ~~company,~~ provider or viatical settlement broker about a viator and insured may not be disclosed in any form to any person, unless disclosure:

(a) through (4) remain as proposed.

AUTH: 33-20-1315, MCA
IMP: 33-20-1311, MCA

COMMENT 10: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, stated that it was unclear when mandatory disclosures were to take place under ARM 6.6.8505.

RESPONSE 10: The Department agrees that ARM 6.6.8505(1) should be clarified by specifying that disclosures must be made "when an application for a viatical settlement contract is taken."

COMMENT 11: The commenter, a representative of the American Council of Life Insurers, was concerned that use of the phrase "viatical settlement company" used in ARM 6.6.8505 would create an ambiguity.

RESPONSE 11: The Department agrees and changed all references to a "viatical settlement company" to "viatical settlement provider" in ARM 6.6.8505 and 6.6.8508. The term viatical settlement provider is adequately defined in 33-20-1302(6), MCA.

COMMENT 12: The commenter, a representative of the American Council of Life Insurers, proposed removing the words "significant other" from ARM 6.6.8505(2), as the phrase is undefined and may create ambiguity.

RESPONSE 12: The Department agrees that these words are undefined and may create ambiguity. To correct the problem, the Department will remove the phrase "spouse or a significant other" and simply refer to the viator and insured's family. A spouse is commonly understood to be a member of a person’s family.

6.6.8507 STANDARDS FOR EVALUATION OF REASONABLE PAYMENTS

(1) In order to assure that viators receive a reasonable return for viaticating an insurance policy, the following shall be minimum discounts:

Insured's Life Expectancy	Minimum Percentage of ~~Face Value Less Outstanding Loans Received by a Viator~~ Net Death Benefit

Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but no greater than 24 months	60%
~~24 months or more~~	~~50%~~

(2) If the insured's life expectancy is 24 months or more, the viator must receive at least the greater of the cash surrender value or accelerated death benefit of the policy unless the viator is chronically ill.

(3) If the insured is chronically ill and has a life expectancy of greater than 24 months, the viator must receive at least 30% of the net death benefit.

~~(2)~~(4) Except where the cash surrender value or accelerated death benefit is paid, ~~The~~ the percentage may be reduced by 5% for viaticating a policy ~~written by an insurer rated less than the highest four categories by A.M. Best, or a comparable rating by another rating agency~~ for which the insurer of the policy has an A.M. Best rating that is at or below a marginal rating.

AUTH: 33-20-1315, MCA
IMP: 33-20-1315, MCA

COMMENT 13: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, suggested that the defined term "net death benefit" should be used to define the minimum payment standards used to determine reasonableness of payments to viators.

RESPONSE 13: The Department agrees and used "net death benefit" throughout ARM 6.6.8507.

COMMENT 14: Two commenters suggested that a minimum payout of 50% of the net death benefit to viators with a life expectancy of greater than 24 months was excessive.

RESPONSE 14: The Department agrees and substituted the "greater of the cash surrender value or accelerated death benefit" language used in the proposed model rule promulgated by the National Association of Insurance Commissioners for viators who are not chronically ill and have a life expectancy of greater than 24 months in ARM 6.6.8507(2).

COMMENT 15: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, contended that a viator's payment should not be reduced pursuant to ARM 6.6.8507(4) in cases where the insurance policy of the insured was assumed by an insurer with a better A.M. Best rating.

RESPONSE 15: The Department agrees and amended the proposed rule so that the rating of the insurer of the policy

would be used instead of the rating of the original underwriter of the policy.

COMMENT 16: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, proposed changes to ARM 6.6.8507 that would specify that payments to a viator who received only the cash surrender value would not be reduced in cases where the insurer of the policy has a less than marginal A.M. Best rating.

RESPONSE 16: The Department agrees and changed this rule to permit reduction for a marginal rating only where the viator has received more than the cash surrender value or accelerated death benefit.

6.6.8508 GENERAL RULES (1) remains the same.

(2) Payment of the proceeds of a viatical settlement pursuant to 33-20-1314, MCA, must be by means of wire transfer to ~~the~~ an account ~~of~~ designated by the viator in a notarized writing signed by the viator or by certified check or cashier's check.

(3) remains as proposed.

(4) A viatical settlement provider~~,~~ or viatical settlement broker ~~or viatical settlement representative~~ shall not discriminate, as provided in 33-20-1313, MCA, in the making or solicitation of viatical settlements ~~on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation,~~ or discriminate between viators with dependents and without.

(5) through (7) remain as proposed.

(8) A viatical settlement provider~~,~~ or viatical settlement broker ~~or viatical settlement representative~~ shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator, other than a viatical settlement broker, with respect to the viatical settlement.

(9) A viatical settlement provider shall not knowingly solicit ~~investors~~ purchasers who have treated or have been asked to treat the illness of the insured whose coverage would be the subject of the investment.

(10) The following standards apply to advertising ~~a~~ of viatical ~~settlement~~ settlements:

(a) through (11)(a) remain as proposed.

(b) the premiums to be paid by the viatical settlement ~~company~~ provider and the viator will be apportioned, unless the viatical settlement contract specifies that all premiums shall be paid by the viatical settlement ~~company~~ provider. The contract may also require that the viator reimburse the viatical settlement provider for the premiums attributable to the retained interest; and

(c) and (c)(i) remain as proposed.

(ii) send a copy of the instrument sent from the insurance company to the viatical settlement ~~company~~ provider that acknowledges the viator's interest in the policy.

AUTH: 33-20-1315, MCA
IMP: 33-20-1313 and 33-20-1314, MCA

COMMENT 17: The commenter, a representative of the American Council of Life Insurers, observed that the term "viatical settlement representative" is undefined and may lead to confusion.

RESPONSE 17: The Department agrees that the term may lead to confusion and in order to alleviate the problem, removed all reference to "viatical settlement representatives" in ARM 6.6.8508 and New Rule II (ARM 6.6.8511). All of the parties that are likely to be involved with viatical settlement contracts have been defined in code or in these rules, and the addition of a "viatical settlement representative" is unnecessary and confusing.

COMMENT 18: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, suggested that language in proposed ARM 6.6.8508(2) be changed to allow the viator to direct that proceeds of the sale of a policy be sent to a third party.

RESPONSE 18: The Department recognizes that some viators may appreciate the convenience of this approach but would prefer to adhere to the National Association of Insurance Commissioners' model language and allow the viator to direct the proceeds of the transaction however he or she desires after the transaction is complete. The Department made this decision in the interest of uniformity with other states and with concerns about fraud, undue influence, and duress in mind.

COMMENT 19: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, requested a change in the language of ARM 6.6.8508(2) that would allow payment of the proceeds to be made to an account designated by the viator instead of an account of the viator.

RESPONSE 19: The Department generally agrees that proceeds need not always be deposited in an account owned by the viator, but in the interest of reducing the possibility of fraud, the department would like the viator's authorization of the transfer of funds to be notarized so that it is clear that the viator specifically intended that funds be deposited in the designated account.

COMMENT 20: The commenter, a representative of Life Settlement Institute, a trade association composed of life

settlement providers, suggested that ARM 6.6.8508(4), which prohibits discrimination by viatical settlement brokers and providers, specifically refer to a non-discrimination statute in the Montana Code Annotated.

RESPONSE 20: The Department agrees that reference to statute would avoid unnecessary duplication. The commenter referred to 49-1-102, MCA; however, the Department believes that reference to 33-20-1313, MCA, in the Insurance Code is more appropriate.

COMMENT 21: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, indicated that payment of finder's fees or commissions was inappropriate except in the case of such payments to a licensed viatical settlement broker.

RESPONSE 21: The Department agrees that it is permissible for a viatical settlement broker to receive a finder’s fee or commission and added language to ARM 6.6.8508 suggested by the commenter.

COMMENT 22: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, suggested that the term "investors" be replaced with the term "purchasers" in ARM 6.6.8508.

RESPONSE 22: The department agrees that "purchasers" is a more appropriate term as the term viatical settlement purchaser is defined at 33-20-1302(8), MCA.

4. ARM 6.6.8506 is repealed exactly as proposed.

5. New Rules I through III are adopted as proposed, but with the following changes, stricken material interlined, new material underlined:

NEW RULE I (ARM 6.6.8510) REPORTING REQUIREMENT (1) On or before March 1 of each calendar year, each viatical settlement provider licensed in this state shall ~~make a report of all viatical settlement transactions where the viator is a resident of this state and for all states in the aggregate containing the following information~~ submit the following related to the licensee's activities for the previous calendar year:

(a) ~~for viatical settlements contracted during the reporting period:~~ a report of the viatical settlement transactions in all states and territories, which shall be submitted on Form VSP 001;

~~(i) date of viatical settlement contract;~~

~~(ii) viator's state of residence at the time of the contract;~~

~~(iii) mean life expectancy of the insured at time of contract in months;~~

~~(iv) face amount of policy viaticated;~~

~~(v) net death benefit viaticated;~~

~~(vi) estimated total premiums to keep policy in force for mean life expectancy;~~

~~(vii) net amount paid to viator;~~

~~(viii) source of policy (b-broker; d-direct purchase; sm-secondary market);~~

~~(ix) type of coverage (i-individual or g-group);~~

~~(x) within the contestable or suicide period, or both, at the time of viatical settlement (yes or no);~~

~~(xi) primary International Classification of Diseases (ICD) Diagnosis Code, in numeric format, as defined by the international classification of diseases, as published by the U.S. department of health and human services; and~~

~~(xii) type of funding (i-institutional; p-private);~~

(b) ~~for viatical settlements where death has occurred during the reporting period:~~ a report of the viatical settlement transactions related to Montana viators, which shall be submitted on Form VSP 002;

~~(i) date of viatical settlement contract;~~

~~(ii) viator's state of residence at the time of the contract;~~

~~(iii) mean life expectancy of the insured at time of contract in months;~~

~~(iv) net death benefit collected;~~

~~(v) total premiums paid to maintain the policy (wp-waiver of premium; na-not applicable);~~

~~(vi) net amount paid to viator;~~

~~(vii) primary ICD Diagnosis Code, in numeric format, as defined by the ICD, as published by the U.S. department of health and human services;~~

~~(viii) date of death;~~

~~(ix) amount of time between date of contract and date of death in months; and~~

~~(x) difference between the number of months that passed between the date of contract and the date of death and the mean life expectancy in months as determined by the reporting company;~~

(c) ~~name and address of each viatical settlement broker through whom the reporting company purchased a policy from a viator who resided in this state at the time of contract;~~ a report of the individual mortality of Montana insureds, which shall be submitted on Form VSP 003; and

(d) ~~number of policies reviewed and rejected; and~~ a certification of the information contained in the reports, which shall be submitted on Form VSPB 001 and shall be filed with the reports.

~~(e) number of policies purchased in the secondary market as a percentage of total policies purchased.~~

(2) On or before June 1 of each calendar year, each viatical settlement provider licensed in this state shall submit an annual audited financial statement, if such statements are regularly prepared by or for the viatical settlement provider in the ordinary course of business, or

such other financial statements as the commissioner shall require which may include but are not limited to:

(a) a balance sheet reporting assets, liabilities, capital, and surplus;

(b) a statement of operations of the viatical settlement provider for the preceding calendar year;

(c) a statement of changes in capital and surplus; and

(d) a statement of cash flows.

(3) On or before March 1 of each calendar year, each licensed viatical settlement broker shall submit the following related to the licensee's activities for the previous calendar year:

(a) a report of the viatical settlement transactions in all states and territories, which shall be submitted on Form VSB 001;

(b) a report of the viatical settlement transactions related to Montana viators, which shall be submitted on Form VSB 002; and

(c) a certification of the information contained in the reports, which shall be submitted on Form VSPB 001 and shall be filed with the reports.

(4) The following materials promulgated by the national association of insurance commissioners are available from the department at 840 Helena Ave., Helena, Montana 59601, and are incorporated by reference:

(a) Form VSP 001, "Viatical Settlement Provider Report-All States and Territories" (March 2004);

(b) Form VSP 002, "Viatical Settlement Provider Report-Montana Insureds Only" (March 2004);

(c) Form VSP 003, "Individual Mortality Report-Montana Insureds Only" (March 2004);

(d) Form VSB 001, "Viatical Settlement Broker Report-All States and Territories" (March 2004);

(e) Form VSB 002, "Viatical Settlement Broker Report-Montana Insureds Only" (March 2004); and

(f) Form VSPB 001, "Viatical Settlement Provider/Broker Certification Form" (March 2004).

AUTH: 33-20-1315, MCA
IMP: 33-20-1309, MCA

COMMENT 23: Two commenters suggested that the Department use the National Association of Insurance Commissioners' model rule and reporting forms for financial reporting by viatical settlement brokers and providers instead of the language proposed by the Department in New Rule I (ARM 6.6.8510).

RESPONSE 23: The Department agrees to use the model rules and forms, with some additional Montana specific requirements that will enable the department to carry out its statutory duty to determine whether a viatical settlement provider is financially responsible.

NEW RULE II (ARM 6.6.8511) PROHIBITED PRACTICES (1) A viatical settlement provider~~,~~ or viatical settlement broker ~~or viatical settlement representative~~ shall not provide patient identifying information to any person, unless the insured ~~and viator provide~~ provides written consent to the release of the information at or before the time ~~of the viatical settlement transaction~~ the viator enters into a viatical settlement contract pursuant to ARM 6.6.8505(3).

(2) A viatical settlement provider~~,~~ or viatical settlement broker ~~or viatical settlement representative~~ shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider~~,~~ or viatical settlement broker ~~or viatical settlement representative~~ is served with a subpoena and, therefore, is compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at ~~their~~ the insured's last known ~~addresses~~ address within five business days after receiving notice of the subpoena.

(3) through (5) remain as proposed.

AUTH: 33-20-1315, MCA
IMP: 33-20-1313, MCA

COMMENT 24: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, noted that the term "viatical settlement transaction" was not defined in New Rule II (ARM 6.6.8511) and suggested that the phrase be defined.

RESPONSE 24: In lieu of defining the phrase, the department removed it and substituted the phrase "at or before the time the viator enters into a viatical settlement contract."

COMMENT 25: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, recommended that the Department require only the insured to consent to release of patient identifying information in New Rule II (ARM 6.6.8511) rather than requiring both the insured and the viator to consent.

RESPONSE 25: The Department agrees with this recommendation and changed New Rule II (ARM 6.6.8511) accordingly.

COMMENT 26: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, asked the Department to remove from New Rule II (ARM 6.6.8511) a requirement that would prohibit use

of an unrealistic life expectancy in order to reduce the payout due to a viator.

RESPONSE 26: The Department believes this consumer protection measure is necessary to protect consumers from unethical practices.

NEW RULE III (ARM 6.6.8512) INSURANCE COMPANY PRACTICES

(1) remains as proposed.

(a) a current authorization consistent with applicable law, signed by the policyowner or certificateholder, accompanies the request; and

(b) in the case of an individual policy or group coverage where details with respect to the certificate holder's coverage are maintained by the insurer, submission of a form prescribed by the commissioner, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form~~; and~~.

~~(c) in the case of group insurance coverage:~~

~~(i) submission of a form prescribed by the commissioner, which has been completed by the viatical settlement provider or viatical settlement broker in accordance with the instructions on the form; and~~

~~(ii) which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.~~

(2) remains as proposed.

(3) A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this rule in excess of any usual and customary charges to policyowners, contractholders, certificateholders or insureds for similar services.

(4) remains as proposed.

AUTH: 33-19-306 and 33-20-1315, MCA
IMP: 33-19-306, MCA

COMMENT 27: Two commenters proposed adding a provision to New Rule III (ARM 6.6.8512) that would provide "An insurance company shall not require the viator or insured to sign any request for change in a policy or group certificate from a viatical settlement provider that is the owner or assignee of the insured's insurance coverage, unless the viator or insured has ownership, assignment, or irrevocable beneficiary rights under the policy. In such a situation, the viatical settlement provider shall provide timely notice to the insured that a settlement transaction on the policy has occurred. Timely notice shall be provided within 15 calendar days of the change in a policy or group certificate."

RESPONSE 27: This Department agrees that this provision may reduce unwarranted interference with a viatical settlement

by an insurance company once a viatical settlement contract has been agreed to; however, the department would prefer to include this proposal in a subsequent notice of proposed rulemaking in order to give the public further opportunity to participate.

COMMENT 28: One commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, proposed the following language for inclusion in New Rule III (ARM 6.6.8512): "It is unlawful for an insurance company to prohibit, restrict, limit, or impair a life insurance producer from lawfully operating as a viatical settlement broker or otherwise negotiating viatical settlement contracts on behalf of a viator, aiding and assisting a viator with a viatical settlement contract, or otherwise participating in a viatical settlement transaction provided for in this chapter or to engage in any transaction, act, practice, or course of business or dealing which restricts, limits, or impairs in any way the lawful transfer of ownership, change of beneficiary, or assignment of a policy to effectuate a viatical settlement contract." Another commenter, a representative of the American Council of Life Insurers, argued that this proposal would "impair the lawful contract rights of an insurer and its appointed producers."

RESPONSE 28: The Department believes this proposal is a substantial departure from the rule proposed in the notice of proposed rulemaking and would prefer to address this issue in a separate notice in order to afford a full opportunity for public participation.

COMMENT 29: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, proposed changes to New Rule III (ARM 6.6.8512) which he indicated would make the rule conform to the National Association of Insurance Commissioners' model rule.

RESPONSE 29: The Department reviewed the proposed rule and the model rule and altered the language in the proposed rule to conform to the National Association of Insurance Commissioners' model.

COMMENT 30: Two commenters suggested that, in order to eliminate potential confusion, the Department propose eliminating existing viatical rules in their entirety and replacing them with the new rules.

RESPONSE 30: The Department examined this alternative in drafting the notice of proposed rulemaking; however, it determined in consultation with the Secretary of State's Office that modifying the existing rules was the most appropriate method of achieving the department's objectives.

6. The Department has thoroughly considered one additional comment made. A summary of that comment received and the Department's response follows:

COMMENT 31: Two commenters encouraged the Department to change the financial accountability requirements in ARM 6.6.8502 to allow viatical settlement providers and brokers to obtain either an errors and omissions policy or a surety bond.

RESPONSE 31: In this notice of proposed rulemaking, the Department has not proposed changing any of the provisions of ARM 6.6.8502. Pursuant to the Montana Administrative Procedure Act, the Department must give notice and an opportunity to be heard with respect to a change such as the one proposed by the commenters. The Department will study the suggested changes, but will not take action with respect to the comments as part of this rulemaking.

JOHN MORRISON, State Auditor
and Commissioner of Insurance

By: /s/ Alicia Pichette
Alicia Pichette
Deputy Insurance Commissioner

By: /s/ Patrick M. Driscoll
Patrick M. Driscoll
Rule Reviewer

Certified to the Secretary of State on January 3, 2005.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.716, 17.36.912, 17.36.914, 17.36.916, 17.36.922, 17.38.101, and 17.38.106 pertaining to incorporation by reference of DEQ-4 as it pertains to water quality	CORRECTED NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On June 17, 2004, the Board of Environmental Review published MAR Notice No. 17-213 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1347, 2004 Montana Administrative Register, issue number 12. On October 21, 2004, the Board published the notice of amendment of the rules at page 2579, 2004 Montana Administrative Register, issue number 20.

2. This corrected notice of amendment is being published to amend the edition of DEQ-4 from 2002 to 2004 in ARM 17.36.922(4) that should have been proposed and adopted under MAR Notice No. 17-213. The amendment is shown below:

17.36.922 LOCAL VARIANCES (1) through (3) remain as adopted.

(4) The local board of health's decision regarding a variance of a requirement in this subchapter or in department Circular DEQ-4, ~~2002~~ 2004 edition, may be appealed to the department pursuant to ARM 17.36.924.

3. The replacement pages for this corrected notice of amendment were filed with the Secretary of State's office on December 31, 2004.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

James M. Madden By: *Joseph W. Russell*
JAMES M. MADDEN JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

Certified to the Secretary of State, January 3, 2005.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.502 and 17.56.507 and the adoption of new rules I and II pertaining to underground storage tanks release reporting and corrective action	NOTICE OF AMENDMENT AND ADOPTION (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On November 4, 2004, the Department of Environmental Quality published MAR Notice No. 17-220 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 2668, 2004 Montana Administrative Register, issue number 21.

2. The Department has amended ARM 17.56.507 and adopted new rules I (17.56.607) and II (17.56.608) exactly as proposed, and has amended ARM 17.56.502 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.56.502 REPORTING OF SUSPECTED RELEASES (1) Owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report suspected releases to a person within the remediation division of the department and the implementing agency or to the 24-hour disaster and emergency services officer available at telephone number (406) 841-3911 within 24 hours of discovery of the existence of any of the following conditions:

(a) through (d) remain as proposed.

(e) the presence of ~~liquid~~ product in the tank secondary containment system;

(f) remains as proposed.

(g) an unexplained presence of water in the tank ~~system~~ or in the interstitial space between the tank and the tank secondary containment;

(h) through (2) remain as proposed.

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: The proposed amendment at ARM 17.56.502(1)(e), requiring reporting the presence of any liquid in the tank secondary containment system as a suspected release, would unnecessarily expand the suspect release reporting requirements and pose problems to owners and operators. In many cases, tank secondary containment systems include brine-filled double-walled tanks in which the interstitial space is filled

with brine and monitored with sensors for level changes. The department should not amend ARM 17.56.502(1)(e) as proposed, and continue to require only that the presence of product in tank secondary containment be reported as a suspected release.

RESPONSE: The department agrees that the proposed change to ARM 17.56.502(1)(e), requiring reporting the presence of liquid in tank secondary containment, may result in expanding suspect release reporting requirements to include reporting situations that would not indicate a release. The department wants to be notified of any evidence that a tank is not liquid-tight, but believes that the requirement at ARM 17.56.502(1)(g) to report the presence of water in the tank or in the tank interstices will address this need. The department will not amend ARM 17.56.502(1)(e) as proposed, and will retain the original language requiring only that the presence of product in tank secondary containment be reported as a suspected release.

COMMENT NO. 2: The proposed amendment to ARM 17.56.502(1)(g), requiring reporting the presence of water in any and all portions of the tank system as a suspected release, is overly expansive and burdensome to tank owners and operators. Water may be present in sumps, secondary piping, or other components of the tank system that are not designed for leak detection, without indicating a suspect release or affecting the safe operation of the tank system.

RESPONSE: The department agrees that the proposed amendment to ARM 17.56.502(1)(g) would require reporting the unexplained presence of water in any part of the underground storage tank system as a suspected release. The department also agrees that the presence of water in components of the tank system, other than the tank or tank secondary containment, would not necessarily indicate a suspect release. For example, water may enter sumps or secondary piping during high water conditions at the underground storage tank facility. In order to address the concerns of the commentors and ensure that unusual operating conditions indicating the tank is not water tight are reported as a suspect release, the department will amend ARM 17.56.502(1)(g) to require reporting the unexplained presence of water in the tank or in the interstitial space between the tank and the tank secondary containment as a suspected release.

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: *Tom Livers*
TOM LIVERS, DEPUTY DIRECTOR

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, January 3, 2005.

BEFORE THE MONTANA TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I and II; and the amendment of ARM 18.6.202, 18.6.203, 18.6.211, 18.6.212, 18.6.213, 18.6.242, 18.6.245, and 18.6.262, pertaining to outdoor advertising	)))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On September 23, 2004, the Transportation Commission published MAR Notice No. 18-106 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules relating to Outdoor Advertising at page 2126 of the 2004 Montana Administrative Register, issue number 18.

2. The commission has adopted rule I (18.6.232) and rule II (18.6.264) as proposed.

3. The commission has amended ARM 18.6.212, 18.6.242, 18.6.245, and 18.6.262 as proposed.

4. The commission has amended ARM 18.6.202, 18.6.203, 18.6.211, and 18.6.213 with the following changes, stricken matter interlined, new matter underlined:

18.6.202 DEFINITIONS (1) remains as proposed.

(2) "Commercial electronic variable message signs" means signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights, producing the illusion of movement by means of electronic, electrical or electro-mechanical input and/or the characteristics of one or more of the following classifications:

(a) flashing signs are animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle in which the period of illumination is either the same as, more than, or less than the period of no illumination;

(b) remains as proposed.

(c) environmentally activated signs are animated signs or devices motivated by wind, thermal changes or other natural environmental input, including spinners, pinwheels, pennant strings, reflective disks, rotating slates, glow cubes and/or other devices or displays that respond to naturally occurring external motivation to include light-sensitive devices;

(d) remains as proposed.

(3) "Commercial or industrial activity" means an activity which is permitted only in a commercial or industrial zone or a less restrictive zone by the nearest zoning authority within the state ~~or, if prohibited by the authority, is generally recognized as commercial or industrial activity~~

~~by other zoning authorities within the state~~, except that none of the following is a commercial or industrial activity:

(a) remains as proposed.

(b) any agricultural, forestry, ranching, grazing, farming or related activity, or operation of a wayside stand for sale of fresh fruit, their products, or produce;

(c) through (12) remain as proposed.

18.6.203 UNZONED COMMERCIAL OR INDUSTRIAL ACTIVITY

(1) As clarification of the statutory requirements, the following criteria shall be used to determine whether an activity qualifies an area to be considered unzoned commercial or industrial:

(a) through (c) remain as proposed.

(d) A maximum of two signs shall be permitted from a qualifying activity, and they shall be located on the same side of and adjacent to the controlled highway of the qualifying activity. ~~There can be no roadways between the controlled highway and the qualifying business.~~

(e) through (f) remain as proposed.

18.6.211 PERMITS (1) through (4) remain as proposed.

(5) Signs shall be assigned a permit number and given a permanent identification plate that must be attached to the structure and may be renewed every three years thereafter upon payment of a renewal fee as follows:

(a) 20 cents per square foot~~;~~ for signs 376 feet or more;

(b) if the sign structure has multiple sign faces, the renewal fee is based on the total square footage of the sign area; ~~and~~ or

(c) through (7) remain as proposed.

18.6.213 PERMIT ATTACHMENT (1) remains as proposed.

(2) The permit plate shall be attached to the sign or the supporting structure near the lower left corner of the sign (or supporting pole/beam) facing the traffic. The permit plate must be visible from the roadway.

(3) through (5) remain as proposed.

5. The commission has thoroughly considered all commentary received. The comments received and the commission's response to each follow:

Comment 1: Paul Dennehy of Lamar Outdoor Advertising made a comment on new proposed Rule I, which was also submitted by e-mail to Larry Johns on October 22, 2004. Tri-vision signs, or signs which are characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means, may be permitted on a case by case basis with the approval of the department.

Response: After legal review, it is entirely possible that such new technology is permissible under the present federal guidelines and the existing Federal - State Agreement.

However, to make this change to new rule I in this manner could be viewed as depriving other members of the public from having an opportunity to comment on this proposal. It is recommended that either the department or the outdoor advertising sign industry ask the Transportation Commission to consider such a rule, in the future.

Comment 2: Paul Dennehy of Lamar Outdoor Advertising made an additional comment by e-mail on October 22, 2004 regarding rule 18.6.203(1)(d). Mr. Dennehy proposed that the last sentence be eliminated to avoid confusion.

Response: The department agrees with that comment and will rewrite the proposed changes to make the wording clearer.

Comment 3: Paul Dennehy of Lamar Outdoor Advertising asked in Rule 18.6.213(5) why was $20.00 used for the replacement fee.

Response: Pat Hurley of the department explained that it cost the agency $15.50 to have a new permit plate made and with additional handling charges, the department believes the $20.00 fee as justified.

Comment 4: Rich Munger, private citizen made a comment on two errors. In proposed Rule 18.6.202, "slats" was misspelled; and in Rule 18.6.213 he suggested that the word "plate" be inserted.

Response: The department agrees with Mr. Munger’s comments and will make the changes suggested.

Comment 5: Don Vanica, Billings District Right-of-Way, commented on rule 18.6.203(1)(d), that the proposed wording was not clear in the last sentence.

Response: Mr. Vanica’s comment is similar to Comment No. 2 of Paul Dennehy and the department agrees and will rewrite the wording.

Comment 6: No other oral comments were made at the public hearing. However, prior to the hearing, the department had received a written document from SAVE’s Board which was admitted into the record. The SAVE Board supported the new rule I on Variable Messages Signs and new rule II on enforcement. The SAVE Board also made three suggested changes to Rules 18.6.211, 18.6.202, and 18.6.245.

Response: The department concurs with the suggestions by SAVE for the first two rules and will incorporate these into the changes. However, the department disagrees that the suggested change to rule 18.6.245 (3) be limited to 100 square feet rather than the 150 square feet which is being proposed. The reason is that studies conducted by the department with local officials support the 150 square feet sign size.

6. The department and commission acknowledge and thank the proponents for their comments.

TRANSPORTATION COMMISSION

/s/ Shiell Anderson
Shiell Anderson
Chair

/s/ Lyle Manley
Lyle Manley, Attorney
Rule Reviewer

Certified to the Secretary of State, January 3, 2005.

BEFORE THE MONTANA TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through VII pertaining to the Montana scenic-historic byways program	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 4, 2004, the Transportation Commission published MAR Notice No. 18-107 pertaining to the public hearing on the proposed adoption of new Rules I through VII at page 2677 of the Montana Administrative Register, issue number 21.

2. The commission has adopted the following new rules exactly as proposed:

Rule II (ARM 18.14.202)
Rule III (ARM 18.14.203)

3. The commission has adopted the following new rules with the following changes, stricken matter interlined, new material underlined:

Rule I (ARM 18.14.201)
Rule IV (ARM 18.14.204)
Rule V (ARM 18.14.205)
Rule VI (ARM 18.14.207)
Rule VII (ARM 18.14.208)

RULE I (18.14.201) DEFINITIONS For the purpose of this subchapter, the following definitions apply:

(1) "Advisory council" means the technical oversight council composed of no more than 11 members who must have expertise in one or more of the subjects of tourism, visual assessment, tribal cultures and history, Montana history, resource protection, economic development, transportation, or planning.

(2) through (5) remain as proposed.

(6) "Tribal government" means a federally recognized government of any Indian tribe, nation, or other organized group, which owns land and has a reservation in Montana.

AUTH: 60-2-602, MCA
IMP: 60-2-601 and 60-2-602, MCA

RULE IV (18.14.204) SCENIC-HISTORIC BYWAY NOMINATION

(1) In order for a roadway to be nominated as a scenic-historic byway, local government or tribal government must prepare an application that follows the rules and procedures provided by the Montana department of transportation by the date specified for submittal each year.

(2) remains as proposed.

AUTH: 60-2-602, MCA

IMP: 60-2-601 and 60-2-602, MCA

RULE V (18.14.205) REQUIREMENTS OF SCENIC-HISTORIC BYWAY DESIGNATION (1) remains as proposed.

(2) The commission may not designate a road as a scenic-historic byway without the concurrence of the affected local governments or tribal governments and the agencies responsible for maintenance and operation of the road.

(3) All land abutting the scenic-historic byway must be either in ~~public or~~ tribal government ownership within the boundaries of an Indian reservation or in public ownership.

(4) The application shall contain an explanation of the manner in which the byway meets one or more of the intrinsic qualities. In addition, in the application the local government or tribal government shall set forth, to the extent possible, how the scenic-historic byway designation will:

(a) through (6) remain as proposed.

(7) The proposed designation must have concurrence and approval of the application from local governments, tribal governments and agencies with jurisdiction of the road and adjacent to the road.

(8) through (9)(c) remain as proposed.

(d) preclude the ~~locality~~ local or tribal government having adopted the corridor management plan from establishing goals or commitments outside the ~~locality's~~ local or tribal government's jurisdiction; and

(e) through (12) remain as proposed.

AUTH: 60-2-602, MCA
IMP: 60-2-601 and 60-2-602, MCA

RULE VI (18.14.207) NOMINATION OF MONTANA STATE BYWAY DESIGNATIONS FOR NATIONAL DESIGNATION (1) Once a road is designated and signed as a Montana scenic-historic byway, local government or tribal government officials can nominate the road for designation as a national scenic byway or all-American road by completing the requirements for nomination provided by the United States department of transportation.

(2) remains as proposed.

AUTH: 60-2-602, MCA
IMP: 60-2-601 and 60-2-602, MCA

RULE VII (18.14.208) REMOVAL OF MONTANA STATE BYWAY DESIGNATION (1) The two circumstances that allow for a scenic-historic byway to be removed from designation are:

(a) voluntary removal when local government or tribal government no longer wants its designation; and

(b) remains as proposed.

(2) Removal of scenic-historic byway designation requires:

(a) local governments, tribal governments, and stakeholders to follow steps and procedures provided by the Montana department of transportation; and

(b) remains as proposed.

AUTH: 60-2-602, MCA
IMP: 60-2-601 and 60-2-602, MCA

4. The following comments were received and appear with the commission's responses.

COMMENT 1: Comments were received from two of Montana's Reservations and the Montana Tribal Tourism Alliance asking that a tribal member or a person knowledgeable of tribal cultures be included on the Advisory Council.

RESPONSE: The commission agrees and has amended proposed Rule I to reflect that a person with expertise in tribal cultures and history be placed on the advisory council.

COMMENT 2: Comments were received from two of Montana's Reservations and the Montana Tribal Tourism Alliance asking that the definition of "local government" be expanded to include tribal governments.

RESPONSE: The commission agrees that tribal governments should be specifically included in the definitions, but does not agree that it is appropriate to define them as "local governments." To accommodate this request Rule I has been expanded to include an independent definition of tribal government. Further, the term "tribal government" has been added throughout the proposed Rules in order to place such governments on an equal standing with the local governments in regard to the scenic and historic byway program.

COMMENT 3: A comment was received from one of Montana's Reservations and the Montana Tribal Tourism Alliance asking that proposed Rule II be amended to specify that the Advisory Council include a representative from each of the following entities: the Montana Tribal Tourism Alliance; the Tribal Transportation programs; and the Montana-Wyoming Tribal Leaders Council Transportation program.

RESPONSE: While the commission appreciates the suggestion, it was determined that the suggestion not be adopted. This decision was made because the statute that creates the advisory council, section 60-2-602(3), MCA, expresses the requirement that the members of the council possess expertise in certain areas rather than represent certain constituents. In addition, the rule, as proposed, allows the commission a certain amount of flexibility in naming the members of the advisory council, which seems to be the intent of the statute. Finally, nothing in the proposed Rule will prevent the commission from considering and appointing people from the various groups mentioned so long as they have the requisite expertise.

COMMENT 4: A comment was received from one of Montana's Reservations and the Montana Tribal Tourism Alliance asking that proposed Rule V(3) be amended to state that all land abutting the scenic-historic byway must be either in public ownership or on an American Indian Reservation. The comment went on to state

that the term "tribal ownership" in the Rule as currently proposed created the possibility for errors in interpretation, because it was not clear whether the term meant all the land in the Reservation or that owned by tribal members, or had some other meaning.

RESPONSE: The commission agrees, in part, with the comment. The term "tribal ownership" might give rise to conflicting interpretations. The intention had been, in drafting the rule, that abutting land within the Reservations be treated the same as abutting land outside of the Reservation. For example, stretches of highways located adjacent to privately owned land within the Reservation were not to be included in the program. To remedy the possibility of misinterpretation Rule V(3) was amended to say that the abutting land had to be owned by a tribal government. This change, along with the new definition of tribal government, is designed to clearly state the intention of the commission that a tribal government own the abutting land and that it be located within the boundaries of a Reservation.

COMMENT 5: Our Montana, Inc. submitted a comment supporting the comments received from the Montana Tribal Alliance. Our Montana, Inc. also submitted a comment expressing a concern that the language in proposed Rule V(3) contained a limitation that all land abutting a scenic-historic byway must be in public or tribal ownership.

RESPONSE: The language contained in proposed Rule V(3) was the result of considerable debate and consideration by the commission. There was an attempt to balance the desire to move forward with scenic and historic byway program with the private property rights of those landowners abutting such roads and byways. Rather than attempt to spell out all possible exceptions to creating a scenic or historic byway where private property may be impacted, the commission decided that, as a first step, the program would be limited as set forth in the proposed Rule. It was determined that it was better to move forward now with the establishment of a program as set forth in the proposed rules rather than wait until all the complicated considerations could be fully developed. Once an advisory council has been established and the parties have some experience with the program the commission will be able to determine whether, sometime in the future, the program should be expanded.

COMMENT 6: An individual working with the Northern Continental Divide Scenic Loop organization submitted a comment similar to the one received from Our Montana, Inc. More specifically, this individual was concerned that the language found in proposed Rule V(3) would restrict the areas where a scenic or historic byway could be established. Otherwise, this individual supported the proposed rules and urged that the issue be revisited in six months or a year.

RESPONSE: As stated in the response to comment 5, this issue was fully debated and considered by the commission. The commission understands that the language in proposed Rule V(3) will mean that fewer scenic and historic byways may be established, at least initially. For the reasons set forth above, however, the commission has determined to keep the limitation as proposed. As mentioned by this individual, though, the commission may well be willing to revisit this issue in the future once the parties have gained some experience with the program.

COMMENT 7: There was a comment of support for the proposed rules by the Chair of the Montana Tourism Advisory Council. Within this comment was the following statement, "The byway advisory council and the Tourism Advisory Council feel the new rules under consideration are a good starting point for a statewide byways program."

RESPONSE: The commission appreciates this comment and all of the comments in support of the rules urging that the commission and the department begin this program. As stated above, the rules may well be a starting point, which could establish a program that can be expanded in the next few years.

MONTANA TRANSPORTATION COMMISSION

By: /s/ Shiell Anderson
Shiell Anderson, Chairperson

By: /s/ Lyle Manley
Lyle Manley, Rule Reviewer

Certified to the Secretary of State January 3, 2005.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment) CORRECTED NOTICE OF AMENDMENT
of ARM 24.30.104, 24.30.105,)
and 24.30.107, relating to)
occupational safety matters)
in public sector employment)

TO: All Concerned Persons

1. On August 19, 2004, the Department of Labor and Industry published MAR Notice No. 24-30-187 regarding the proposed amendment of the above-stated rules relating to occupational safety matters in public sector employment at page 1909 of the 2004 Montana Administrative Register, Issue No. 16. On November 18, 2004, the Department published the notice of amendment regarding the above-stated rules at page 2811 of the 2004 Montana Administrative Register, Issue No. 22.

2. The reason for the correction to these three rules is that the IMP citations did not show the appropriate underlines to indicate the statute being added. The corrected rule amendments read as follows:

24.30.104 INSPECTIONS AND CITATIONS (1) remains as adopted.

AUTH: 50-71-311, MCA
IMP: 50-71-311 and 50-71-312, MCA

24.30.105 RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES: PURPOSE AND SCOPE (1) remains as adopted.

AUTH: 50-71-301, 50-71-311, MCA
IMP: 50-71-301, 50-71-311 and 50-71-312, MCA

24.30.107 RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES: LOG AND SUMMARY (1) through (7) remain as adopted.

AUTH: 50-71-301, 50-71-311, MCA
IMP: 50-71-301, 50-71-311 and 50-71-312, MCA

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on December 31, 2004.

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State January 3, 2005

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW RULE I, relating to organizational rules, and NEW RULES IV, V and VI, relating to general provisions) CORRECTED NOTICE OF ADOPTION

TO: All Concerned Persons

1. On August 5, 2004, the Department of Labor and Industry published MAR Notice No. 24-121-2 regarding the proposed adoption of the above-stated rules relating to organizational rules and general provisions at page 1666 of the 2004 Montana Administrative Register, issue no. 15. On November 18, 2004, the Department published the notice of adoption regarding the above-stated rules at page 2813 of the 2004 Montana Administrative Register, issue no. 22.

2. While preparing replacement pages for the fourth quarter, it was discovered that NEW RULES I, IV, V and VI were incorrectly numbered. The corrected rule numbering reads as follows, stricken matter interlined, new matter underlined:

NEW RULE I (~~24.121.101~~ 24.121.102) BOARD ORGANIZATION
(1) remains as adopted.

AUTH: 37-31-203, MCA
IMP: 2-4-201, MCA

NEW RULE IV (~~24.121.407~~ 24.121.403) GENERAL REQUIREMENTS
(1) through (10) remain as adopted.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-309, 37-31-311, MCA

NEW RULE V (~~24.121.403~~ 24.121.405) VARIANCES (1) remains as adopted.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

NEW RULE VI (~~24.121.405~~ 24.121.407) PREMISES AND GENERAL REQUIREMENTS (1) through (12) remain as adopted.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, 37-31-311, MCA

3. Replacement pages for the corrected notice of adoption were submitted to the Secretary of State on December 31, 2004.

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State January 3, 2005

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the adoption of new rule II, evaporation standards	)))	CORRECTED NOTICE OF ADOPTION

TO: All Concerned Persons

1. On September 23, 2004, the Department of Natural Resources and Conservation published MAR Notice No. 36-12-101 regarding a public hearing on the proposed amendment of ARM 36.12.101 concerning definitions and adoption of new RULES I through XXIX concerning a complete and correct application, department action, and standards regarding water rights at page 2163 of the 2004 Montana Administrative Register, Issue Number 18. On December 16, 2004, the department published a notice at page 3036 of the 2004 Montana Administrative Register, Issue Number 24, of the adoption of the above-stated rule which clarifies acceptable methods for estimating evaporation losses in water rights.

2. The reason for the correction is the notice of adoption incorrectly listed the permanent number of new rule II as 36.12.109 when it should have listed the number of the rule as 36.12.116. The language in new rule II remains the same as adopted.

3. Replacement pages for the corrected notice of adoption were submitted to the Secretary of State on December 31, 2004.

By: /s/ Arthur R. Clinch
ARTHUR R. CLINCH
Director

/s/ Tim D. Hall
TIM D. HALL
Rule Reviewer

Certified to the Secretary of State December 20, 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 September 30, 2004. This table includes those rules adopted during the period September 1, 2004 through December 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 September 30, 2004, 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.

GENERAL PROVISIONS, Title 1

1.2.419 Scheduled Dates for the Montana Administrative Register, p. 2366, 2821
1.3.102 Guidelines Governing Public Participation at Public Meetings, p. 2987
1.3.102 Guidelines Governing Public Participation at Public Meetings, p. 2343, 2806

ADMINISTRATION, Department of, Title 2

I & II Trust Company Examination Fees - Required Bond Amounts for the Licensing of Escrow Businesses, p. 1179, 1947, 2276
I-X State of Montana Voluntary Employees' Beneficiary Association, p. 2779
2.21.121 and other rules - Sick Leave, p. 770, 1321
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