ISSUE NO. 10

The Montana Administrative Register (MAR or Register), 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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Secretary of State's Office, Administrative Rules Bureau, at (406) 444-2055.

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NOTICE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 4.13.1001A relating to state grain laboratory fees	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On June 17, 2006, the Montana Department of Agriculture proposes to amend the above-stated rule relating to state grain laboratory fees.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on June 1, 2006, to advise us of the nature of the accommodation that you need. Please contact Joel A. Clairmont at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.13.1001A GRAIN FEE SCHEDULE (1) The effective date of this rule is ~~July 15, 2005~~ July 7, 2006.

(2) remains the same.

(a) ~~The state grain laboratory hours~~ Normal office hours are 8 a.m. to 5 p.m. Monday through Friday. All other hours and holidays will be considered overtime.

(i) Sampling hours are 6 a.m. to 8 p.m. Monday through Saturday. Sampling hours will need to be scheduled the day before if required outside the normal office hours. All other hours and holidays will be considered overtime.

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

(e) submitted sample inspection (include DKT (damaged kernels total) identified, FM (foreign material) identified, SHBN (shrunken and broken kernels), and DEF (total defects)).....$8.00

(i) through (3)(h) remain the same.

(i) additional statements: ~~e.g., foreign material (FM) identified; damaged kernels total (DKT) identified or other additional statements~~ requested by the applicant, per statement $2.50

(j) remains the same.

(k) vomitoxin (DON) per ~~qualitative~~ quantitative analysis test.....$23.50

(l) through (4)(d) remain the same.

(e) additional statements: ~~e.g., foreign material (FM) identified; damaged kernels total (DKT) identified or other additional statements~~ requested by the applicant, per statement $2.50

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

(i) germination, 48 hour hydrogen peroxide, 48 hour blotter, or 72 hour blotter, per determination $7.00

~~(ii) chit determination, per determination.....$8.00~~

(k) through (m) remain the same.

(n) additional statements: ~~e.g., foreign material (FM) identified; damaged kernels total (DKT) identified or other additional statements~~ requested by the applicant, per statement $2.50

AUTH: 80-4-721, MCA
IMP: 80-4-403, MCA

REASON: We are changing the wording from state grain laboratory hours to normal office hours to show a difference between the actual office hours and sampling hours. Sampling hours extend before and after normal business hours. This accommodation will give the elevators more flexibility to use the state grain laboratory's services.

As per 80-4-709, MCA, the department shall maintain an official testing laboratory. Producers and elevators have indicated that they would send more samples to the state grain laboratory if, for example, the damaged kernels total identified was included in the $8.00 grading fee.

Changes to (3)(e) are being made so that we can give more factor results along with the grade results. This will include damaged kernels total identified, foreign material identified, shrunken and broken kernels, and total defects. This will give the producers/elevators an added benefit.

In (3)(i), removing the specific items listed under the additional statements (e.g., foreign material (FM), damaged kernels total (DKT) identified, etc.) is being done in that additional statements for wheat, barley, corn, flaxseed, triticale, sunflower, rye, mixed grain, oats, and canola will now be included in the submitted sample inspection section of (3)(e). Currently, the state grain laboratory receives approximately $500 per month from the identification of foreign material and damaged kernels in these commodities.

In (4)(e), removing the specific items listed under the additional statements (e.g., foreign material (FM), damaged kernels total (DKT) identified, etc.) is being done in that additional statements for rapeseed, khorasan, safflower seed, mustard, waxy barley, and buckwheat will now be included in the submitted sample inspection section of (3)(e). Currently the grain lab takes in approximately $200 per month from the identification of foreign material and damaged kernels in these commodities.

The fact that we have always charged a fee for these two factors has become a major problem for the state grain laboratory. Some producers and elevators have chosen cost saving measures to play a major role in their lab choice. We believe

that producers and elevators will bring more samples to the state grain laboratory and should more than make up for the combined $700 per month loss.
While these changes appear to result in a $700 per month loss to the state grain laboratory, it would only take about 90 more samples per month to make up the approximate $700 per month loss of revenue. That is calculated by taking 90 samples x $8.00 = $720. During harvest, it might only take three farmers to send in 30 samples each, which is not uncommon, to make up the loss of revenue. Once the word is out about the fee changes and visits are made to the elevators explaining the changes, we expect this will generate more samples being graded by the state grain laboratory. Overall, it is believed the financial impact will be an increase in revenue, but the department is unable to accurately calculate it at this time.

In (3)(k), we are replacing the word qualitative with quantitative. The quantitative test gives a more precise reading of parts per million which is what producers and elevators are requesting.

In (5)(j)(i), due to the fact that some barley contracts require the 48 hour blotter or 72 hour blotter, adding these will enable producers/elevators to utilize the state grain laboratory. Since these are uncommon tests, we expect financial impact to be minimal.

In (5)(j)(ii), chit determination was removed because the state grain laboratory is no longer performing the test. Since chit determination is not a common test, we expect financial impact to be minimal.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Joel A. Clairmont at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than June 15, 2006.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Joel A. Clairmont at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. A written request for hearing must be received no later than June 15, 2006.

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

determined to be 416 persons based on a farm population of 41,610 (21,900 farms reporting cropland x 1.9 people per farm) per Montana Agricultural Statistics Service data.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the department's website at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF AGRICULTURE

/s/ Nancy K. Peterson
Nancy K. Peterson, Director

/s/ Timothy J. Meloy
Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, May 8, 2006.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.102.4001 pertaining to reimbursement to libraries for interlibrary loans	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 8, 2006, at 10:00 a.m., a public hearing will be held in the Grizzly conference room of the Montana State Library, at 1515 East 6th Ave., Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Montana State Library 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 State Library no later than 5:00 p.m. on June 1, 2006 to advise us of the nature of the accommodation that you need. Please contact Julie Stewart, Montana State Library, 1515 East 6th Ave., P. O. Box 201800, Helena, MT 59620-1800, phone (406) 444-3384, TDD (406) 444-3005, fax (406) 444-0266, or e-mail jstewart2@mt.gov.

3. The rule proposed to be amended provides as follows:

10.102.4001 REIMBURSEMENT TO LIBRARIES FOR INTERLIBRARY LOANS (1) Definitions used in this ~~section~~ subchapter include:

(a) "Interlibrary loan" means the loaning or provision of copies of library materials from one Montana library to another Montana library. Such materials are to include, but are not limited to, the following: book, copy in lieu of book, magazine/periodical, copy in lieu of magazine/periodical, audiovisual title, government document/technical report, and pamphlets, some of which are to be returned.

(b) "Libraries eligible for interlibrary loan reimbursement" are defined in 22-1-328(2), MCA.

(c) "Net loaning libraries" are those libraries whose interlibrary loans exceed their borrowing of library materials during the year for which they seek net loaning reimbursement, provided the libraries reported and requested reimbursement for the loans.

(2) Reimbursements will be made on an annual basis based on the following:

(a) Reimbursement will be made at a rate determined by the State Library.

(i) This rate is based upon an estimated number of annual interlibrary loans (ILL) in Montana and available funds.

(ii) Available funds for ILL reimbursement will be divided evenly in half.

(iii) Every eligible library will be reimbursed from one-half these total available funds. These funds, shared between every eligible library, shall be called "simple loaning reimbursement".

(iv) Simple loaning reimbursement will be computed by dividing the total available funds in half, and distributing that half of the funds in proportional amounts to every library eligible for simple loaning reimbursement. The total amount of money available to the State Library for simple loaning reimbursement will be divided by the total number of loans reported to obtain the per-loan rate of reimbursement. The rate of reimbursement will then be applied to each simple loan to determine the amount of reimbursement for each library.

(v) Only net loaning libraries are eligible for reimbursement from the remaining half of the total available funds after simple loaning reimbursement funds are distributed. These funds shall be called "net loaning reimbursement".

(vi) Net loaning reimbursement will be computed by dividing the total amount of money available to the State Library for net loaning reimbursement by the total number of net loans reported to obtain the per-loan rate of reimbursement. The rate of reimbursement will then be applied to each net loan to determine the amount of reimbursement for each library.

~~(ii)~~ (vii) ~~This rate~~ These rates may be adjusted if deemed necessary by the State Library~~,~~ by dividing any remaining funds by the number of interlibrary loans claimed for reimbursement.

(b) A form for requesting reimbursement will be issued by the State Library. No reimbursement shall be made to any library which does not use the reimbursement form to submit its reimbursement request, or which fails to meet specified submittal deadlines for such requests.

(c) Each annual payment shall be made only for interlibrary loans within the specified year for which reimbursement funding is available. No count of interlibrary loan transactions shall be carried over from one year to another.

(d) Reimbursements will be made within 30 working days after the submittal date.

(e) No library may levy service charges, handling charges, or use fees for interlibrary loans for which it is reimbursed under the provisions of 22-1-325 through 22-1-331, MCA and these rules.

(i) Actual charges for postage are discouraged but not expressly prohibited under these rules.

(ii) Costs for special postal handling of interlibrary loan requests, when requested by the borrowing library, are chargeable costs.

(iii) Interlibrary loans, when completed via electronic submission, also count as reimbursable interlibrary loans. Costs associated with such electronic submission are chargeable if the transmission was specified by the requesting library. Electronic submissions qualify as special handling.

(iv) Per page photocopying charges may not be separately charged to the borrowing library but are assumed to be covered by the reimbursement under these rules.

(f) Providers of interlibrary loan are expected to follow the law in relation to copyright.

(g) Libraries applying for interlibrary loan reimbursement under 22-1-325 ~~-~~ through 22-1-331, MCA and these rules must retain certain records as follows:

(i) The library requesting reimbursement shall retain records of interlibrary loans which support and agree with the number submitted for reimbursement.

These records must include both the number of items loaned to eligible libraries, and the number of items borrowed. Reimbursement requests will include library-by-library detail of items lent to, and borrowed from, as well as total items borrowed and lent.

(ii) Libraries requesting reimbursement shall retain their records of interlibrary loan transactions for a period of three years and must produce these records for auditing purposes.

(h) For any questions arising because of this rule, the final arbiter is the State Library Commission.

(3) For a library to receive reimbursement through the program, it must annually certify to the State Library that the appropriate member of its staff has demonstrated competence regarding the application of the standardized interlibrary loan protocols.

AUTH: 22-1-330, MCA
IMP: 22-1-328, MCA

4. The Montana State Library Commission is requesting these administrative rule changes because the interlibrary loan reimbursement program is struggling to meet the libraries' needs. The available monies to fund the program remain stable, while the number of interlibrary loan requests within Montana continue to grow, thus the amount of reimbursement per item is decreasing. The commission wants the ability to provide more subsidy to those libraries who loan more materials than they borrow. The proposed rule change will make that possible.

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 Julie Stewart, Montana State Library, 1515 East 6th Ave., P.O. Box 201800, Helena, MT 59620-1800 no later than 5:00 p.m. on June 16, 2006. Data, views, or arguments may also be submitted by facsimile to (406) 444-0266 or by e-mail to jstewart2@mt.gov.

6. An electronic copy of this Notice of Public Hearing is available through the State Library's website at http://msl.mt.gov. The State Library 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 State Library 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.

7. Darlene Staffeldt, State Librarian, has been designated to preside over and conduct this hearing.

8. The Montana State Library maintains a list of persons who wish to receive notices of rulemaking actions proposed by the State Library. 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 State Library administrative rulemaking proceedings or other administrative proceedings. Such written requests may be mailed to Julie Stewart, Montana State Library, 1515 East 6th Ave., P.O. Box 201800, Helena, MT 59620-1800, faxed to the library at (406) 444-0266, e-mailed to jstewart2@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.

By: /s/ Ron Moody
State Library Commission
Ron Moody, Chairperson

By: /s/ Darlene Staffeldt
Rule Reviewer
Montana State Library

Certified to the Secretary of State May 8, 2006.

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

In the matter of the adoption of new rules I through IV; the amendment of ARM 12.9.802; the repeal of ARM 12.9.801 and 12.9.808; and the transfer of ARM 12.9.810 pertaining to game damage hunts, management seasons, and game damage response and assistance	)))))))	NOTICE OF EXTENSION OF COMMENT PERIOD ON PROPOSED ADOPTION, AMENDMENT, REPEAL, AND TRANSFER

TO: All Concerned Persons

1. On May 4, 2006, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-319 regarding the public hearings on the proposed adoption, amendment, repeal, and transfer of the above-stated rules at page 1105 of the 2006 Montana Administrative Register, Issue No. 9.

2. The above-referenced notice stated that the deadline for public written comment was June 2, 2006. Since the last hearing on the proposed rule changes is on June 15, 2006, the commission is extending the written comment deadline to June 22, 2006. In order to assure informed public participation in this rulemaking process, the commission believes that it is necessary for concerned persons to be able to provide written comments until all the hearings are completed.

3. Written data, views, or arguments may be submitted to Alan Charles, P.O. Box 200701, Helena, Montana 59620-0701; phone (406) 444-3798; fax (406) 444-3023; or e-mail acharles@mt.gov and must be received no later than June 22, 2006.

/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 May 8, 2006

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.58.326 and 17.58.336 pertaining to applicable rules governing the operation and management of petroleum storage tanks and review of claims	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (PETROLEUM BOARD)

TO: All Concerned Persons

1. On June 7, 2006, at 10:00 a.m., the Petroleum Tank Release Compensation Board will hold a public hearing in Room 112, 1100 North Last Chance Gulch, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., May 30, 2006, to advise us of the nature of the accommodation that you need. Please contact Terry Wadsworth, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; phone (800) 556-5291; fax (406) 841-5091; e-mail twadsworth@mt.gov.

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

17.58.326 APPLICABLE RULES GOVERNING THE OPERATION AND MANAGEMENT OF PETROLEUM STORAGE TANKS (1) The applicable state rules referenced in 75-11-308(1)~~(a)~~(b)(ii) and ~~(c)~~ 75-11-309(1)(b), MCA, are:

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

AUTH: 75-11-318, 75-11-319, MCA
IMP: 75-11-308, MCA

REASON: The 2005 legislature renumbered 75-11-308(1)(a)(ii), MCA, to 75-11-308(1)(b)(ii), MCA, and deleted former 75-11-308(1)(c), MCA, and added a new section 75-11-309(1)(b), MCA.

17.58.336 REVIEW AND DETERMINATION OF CLAIMS FOR REIMBURSEMENT (1) The board must not approve a ~~Claims~~ claim for reimbursement ~~may not be considered~~ unless the owner or operator has submitted a completed application for eligibility and the board has determined that the owner or operator is eligible in accordance with 75-11-308, MCA.

(2) through (6) remain the same.

(7) Claims subject to the provisions of 75-11-309(2) or (3)(b)(ii), MCA, must be reimbursed according to the following:

(a) Except as provided in ~~(10)~~ (7)(e), such claims ~~subject to the provisions of 75-11-308(3), MCA,~~ must be paid pursuant to the following schedule:

Period of Noncompliance	Percent of allowed claim to be reimbursed
1 to 30 days	90%
31 to 60 days	75%
61 to 90 days	50%
91 to 180 days	25%
greater than 180 days	no reimbursement

~~(a)~~ (b) ~~The period of noncompliance begins on the date of a violation letter that is sent by the department by certified mail to an owner or operator. The period of noncompliance ends on the date the department determines that all violations identified in the violation letter are corrected. The department shall indicate, by letter sent by certified mail to the owner or operator, the date that the violations were corrected.~~ For claims subject to the provisions of 75-11-309(2), MCA, the period of noncompliance must begin on the date upon which the department issues an administrative order to the owner or operator. The period of noncompliance must end on the date upon which the owner or operator has satisfied the administrative order, as determined by the department in writing.

~~(b)~~ (c) ~~Reimbursement of claims submitted after issuance of a violation letter must be suspended until all violations are corrected as indicated by a certified letter from the department indicating compliance. After the owner or operator comes into compliance as indicated by the department, the board shall determine the appropriate rate of reimbursement at its next regularly scheduled meeting. Claims submitted prior to the issuance of a violation letter are not suspended and must be reimbursed or denied pursuant to (1) through (6).~~ For claims subject to the provisions of 75-11-309(3)(b)(ii), MCA, the period of noncompliance must begin on the date upon which the board determines that the owner or operator has not complied with 75-11-309, MCA, or rules adopted pursuant to 75-11-309, MCA. The period of noncompliance must end on the date upon which the board determines that the owner or operator has returned to compliance.

(d) Reimbursement of claims filed during the period of noncompliance must be suspended by the board. If the owner or operator returns to compliance as provided in (7)(b) or (c), the board may allow reimbursement of the suspended and future claims as provided in (7)(a). Any such reimbursement is subject to the requirements of 75-11-309(3)(a), MCA.

~~(8) A violation letter is one that is issued by the department to an owner or operator who has failed to remain in compliance. The violation letter must be signed by a division administrator and indicate on it that it is a violation letter being issued pursuant to this rule. The violation letter shall notify the owner or operator of the specific statute(s) or rule(s) alleged to be violated and the action(s) to be taken that correct the violation(s). For purposes of determining the percentage reimbursed under (10) of this rule, the board may review the circumstances of the department's~~

~~issuance of a violation letter, including those relating to whether a violation occurred, whether a violation was corrected, and when a violation was corrected.~~

~~(9) The provisions of (7), (8), (10) and (12) apply only when a release has been discovered and eligibility has been determined by the board, but the owner or operator fails to remain in compliance as required by 75-11-308(1)(e) and (1)(f), MCA.~~

~~(10)~~ (e) The percentages of reimbursement set forth in (7)(a) may be adjusted by the board according to the procedures in (6) upon a substantial showing by the owner or operator that one or more of the following factors applies and would entitle the owner or operator to an adjustment:

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

~~(d)~~ (iv) there was an error in the issuance of the ~~violation letter~~ administrative order or an error in the determination of the date ~~a violation~~ an administrative order was ~~corrected or whether a violation has been corrected~~ satisfied; or

~~(e)~~ (v) any other factor that would render use of the reimbursement schedule in (7)(a) demonstrably unjust.

~~(11)~~ (8) An owner or operator dissatisfied with the denial or disallowance of all or any part of the claim may request a formal hearing. This request, with a specification of the grounds for disagreement with the board's decision, must be filed in writing with the board within 15 days of the ~~receipt of the board's determination by the owner or operator~~ date upon which the board provides written notice to the owner or operator of the board's decision. Upon receiving such request, the presiding officer of the board may appoint a hearing examiner to supervise any discovery and prehearing matters and to conduct the hearing, ~~either at a subsequent meeting of the board or outside a board meeting, subject to 2-4-621, MCA, as the appointment may specify~~ in accordance with ARM 17.58.201.

~~(12)~~ (9) With the exception of the timeframes set forth in (7)(a) ~~of this rule~~, any other time periods specified in this rule may be extended by agreement between the board and the owner or operator.

AUTH: 75-11-318, MCA
IMP: 75-11-309, MCA

REASON: The current version of ARM 17.58.336 sets forth general rules for reimbursement of claims, and also specifically addresses the suspension of claims for noncompliant owners under authority of former 75-11-308(1)(f) and (3), MCA. The 2003 legislature renumbered 75-11-308(1)(f), MCA, as 75-11-308(1)(d), MCA. The 2005 legislature deleted 75-11-308(1)(d) and 75-11-308(3), MCA, and amended 75-11-309, MCA, by adding new provisions for the suspension of claims in those cases where an eligible owner/operator falls out of compliance. See 75-11-309(2) and (3)(b)(ii), MCA. Sections 75-11-309(2) and (3)(b)(ii), MCA, delineate the circumstances under which an owner or operator is deemed to be out of compliance, and provide that the claims of an owner or operator who falls out of compliance must be suspended. Those sections of 75-11-309, MCA, also provide that, if an owner or operator whose claims have been suspended thereafter returns to compliance, the suspended claims may be reimbursed pursuant to criteria established by the board.

The proposed amendments to this rule are necessary to clarify the rule and to address the legislative changes mentioned above.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Terry Wadsworth, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; faxed to (406) 841-5091; or e-mailed to Terry Wadsworth at twadsworth@mt.gov no later than June 15, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Edward Hayes, attorney, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive rulemaking notices. Such written request may be mailed or delivered to Terry Wadsworth, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; faxed to (406) 841-5091; or e-mailed to Terry Wadsworth at twadsworth@mt.gov or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by: PETROLEUM TANK RELEASE COMPENSATION BOARD

/s/ James M. Madden BY: */s/ Greg Cross*
JAMES M. MADDEN GREG CROSS, Chairman

Certified to the Secretary of State May 8, 2006.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of NEW RULE I-accounting system vendor license fee; NEW RULE II-general specifications of approved automated accounting and reporting systems; NEW RULE III-modification of approved automated accounting and reporting systems; NEW RULE IV-system may not be utilized for player tracking; NEW RULE V-testing of automated accounting and reporting systems; NEW RULE VI-application to utilize an approved system; NEW RULE VII-continuation of use of system when vendor license lapses; and the proposed amendment of ARM 23.16.101, 23.16.102, 23.16.1911 and 23.16.1918, concerning definitions for vendors and system licensing of system vendors, information to be provided to department, and testing fees	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On June 8, 2006, at 10:00 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 1, 2006, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; (406) 444-1971; Fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I ACCOUNTING SYSTEM VENDOR LICENSE (1) Before conducting business in this state, a vendor of tier I or tier II automated accounting and reporting systems must obtain a license from the department. An applicant for a license must submit to the department:

(a) application for an accounting system vendor license using Form 17, with special instructions, and Form FD-258, as the forms read on December 1, 2005, which are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) forms 1 and 10 for all applicants as described in ARM 23.16.102;

(c) a complete set of fingerprints, on Form FD-258 provided by the department, obtained and certified by a local law enforcement agency, the department, or a private security company approved by the department for each person required to complete a personal history statement;

(d) financial statements for the applicant's business as described in ARM 23.16.502; and

(e) a check or money order for $2,000 made payable to the state treasurer, which includes payment for the:

(i) $1,000 annual license fee; and

(ii) $1,000 processing fee to cover the actual cost of processing the license.

(2) Based on the actual cost incurred by the department in determining whether the applicant qualifies for licensure, the department will refund any overpayment of the processing fee or collect an amount sufficient to reimburse the department for any underpayment of actual costs. If an applicant withdraws the application after the department has begun processing the application, the department will refund any amount not expended as of the date of withdrawal.

(3) The department may waive the application and processing fee if the applicant is licensed as an operator, distributor, manufacturer of legal or illegal devices, or a route operator, and if the applicant is substantially the same and has not added strangers to the license.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-110, 23-5-637, MCA

NEW RULE II GENERAL SPECIFICATIONS OF APPROVED AUTOMATED ACCOUNTING AND REPORTING SYSTEMS (1) Each automated accounting and reporting system must be inspected in the state for approval by the department. The department may inspect any approved automated accounting and reporting system sold or operated in the state. Any approval granted by the department to a person is not transferable. Upon request, the department must be allowed immediate access to an approved accounting and reporting system.

(2) Tier I and tier II automated accounting and reporting systems are allowed as follows:

(a) tier I automated accounting and reporting systems electronically communicate information from individual video gambling machines, using the logical interface communications protocol provided in ARM 23.16.1920, and forward the information to a state-sponsored internet provider via internet connection. Tier I automated accounting and reporting systems operate in the following manner:

(i) at a minimum an approved tier I system shall communicate the following information to the department:

(A) video gambling machine ID;

(B) filing quarter for meter reading to apply;

(C) notification if the last reading for the quarter;
(D) operator number (location);
(E) route operator license number (if applicable);
(F) notification if meter reading is the first reading for a new video gambling machine;
(G) SAS event code for tier I reporting;
(H) date meter recording was taken;
(I) time meter reading was taken;
(J) soft meter total cents in, total cents played, total cents won, total cents paid;
(K) number of games played;
(L) number of games won; and
(M) accounting system software version;

(ii) monitors video gambling machine performance and records events as defined in ARM 23.16.1920(1)(b);

(iii) video gambling machine system interface boards must utilize power sources independent of that supplied by the video gambling machine so as to not interfere with video gambling machine operation;

(iv) system interface boards shall be securely mounted in each video gambling machine that communicates to an accounting and reporting system; and

(v) a list of events required to be reported to the department is available from the gambling control division.

(b) Tier II automated accounting and reporting systems that electronically communicate video gambling machine information to a state-sponsored internet site. Tier II automated accounting and reporting systems operate in the following manner:

(i) at a minimum an approved tier II system shall communicate the following information to the department:
(A) vgm ID;
(B) filing quarter for meter reading to apply;
(C) notification if the last reading for the quarter;
(D) operator number (location);
(E) route operator license number (if applicable);
(F) notification if meter reading is the first reading for a new vgm;
(G) notification if service report is included;
(H) date meter recording was taken;
(I) time meter reading was taken;
(J) service report codes for problem, labor, and parts before and after service (when applicable);
(K) before and after meter reading indication for service if applicable;
(L) hard meter bill in (if applicable);
(M) hard meter coin in, total played, total won, total paid;
(N) soft meter total in, total played, total won, total paid;
(O) number of games played if available;
(P) number of games won if available; and
(Q) accounting system software version.

(3) The department may provide file layout specifications for all tier I and tier II information reporting.

(4) Data packet transmission reporting periods are programmable by weekday and time in hours and minutes in a 24-hour format.

(5) Data packet transmission supports real time requests and automatic recurrence by week, day, and time.

(6) Automated accounting and reporting systems must be operated in the manner specified by this rule.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-631, 23-5-637, MCA

NEW RULE III MODIFICATION OF APPROVED AUTOMATED ACCOUNTING AND REPORTING SYSTEMS (1) All modifications to tier I systems must be submitted to the department for purposes of maintaining records of the approved versions of the approved system.

(2) Any proposed substantial modification of a tier I system or a series of minor modifications whose total result is substantial must meet all of the specific law or rule requirements in effect at the time of submission. The department's determination that a modification is substantial may be contested pursuant to the Montana Administrative Procedure Act.

(3) All modifications to tier II systems that modify the information or communication of the information required for tier II systems by [NEW RULE II(2)(b)(i)] must be approved by the department.

AUTH: 23-5-621, MCA
IMP: 23-5-631, 23-5-637, MCA

NEW RULE IV AUTOMATED ACCOUNTING AND REPORTING SYSTEM DATA NOT TO BE USED FOR PLAYER TRACKING (1) Data acquired by an automated accounting and reporting system may not be communicated or transferred to any player tracking system using any electronic communications, media, or storage device.

(2) An automated accounting and reporting system may not record or communicate the identity of individual players, club membership, or characteristics of individual players.

AUTH: 23-5-621, MCA
IMP: 23-5-621, MCA

NEW RULE V TESTING OF AUTOMATED ACCOUNTING AND REPORTING SYSTEMS (1) The department may enter into an agreement with accounting system vendors, route operators, or licensed operators to provide for testing of systems under ARM 23.16.2102. Any agreement for testing shall include the following:

(a) the continued reporting and maintenance of records as provided in ARM 23.16.1826 and 23.16.1827, during the test period;

(b) a description of information to be reported to the Gambling Control Division for purposes of validating test results; and

(c) a final date that the test will terminate.

(2) The department will field test all tier I systems as follows:

(a) review data for correct file submission format;

(b) test batch upload process for proper procedures;

(c) test for ability to correct any rejected records;

(d) test submitted e-mail addresses; and

(e) evaluate transmissions of data for a 30-60 day period.

(3) The department will field test all tier II automated accounting and reporting systems by requiring all proposed accounting systems to satisfactorily record and communicate electronic meter readings and to demonstrate the system can reliably record and communicate complex transactions.

(4) The department will provide a web site to allow on-line entry of tier II meter readings. In addition, the department will provide an electronic spreadsheet which will allow for entry of required tier II data.

(5) The department may approve an automated accounting and reporting system for purposes of field testing prior to final approval of the system.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-631, 23-5-637, MCA

NEW RULE VI APPLICATION FOR A VIDEO GAMBLING MACHINE OWNER OR OPERATOR TO UTILIZE AN APPROVED AUTOMATED ACCOUNTING AND REPORTING SYSTEM (1) An owner or operator intending to utilize an approved automated accounting and reporting system shall, not less than 60 days prior to the first day of the quarter in which the system is to be utilized, submit to the department an application for use of the approved automated accounting and reporting system.

(2) The application shall provide the following information:

(a) a description of the approved automated accounting and reporting system, including the name of the accounting system vendor;

(b) a listing of all video gambling machines that will be connected;

(c) information required for issuance of a user ID and password for internet transactions; and

(d) e-mail addresses for authorized employees identified on the application.

(3) The department may approve, deny, or request a modification of the application.

(4) The owner or operator must demonstrate the ability to effectively operate the approved accounting and reporting system, and the department must validate the e-mail addresses for employees identified on the application.

(5) In addition to utilizing an approved accounting and reporting system, the owner or operator will be subject to and must continue to keep records and file quarterly reports manually through the end of the quarter in which they apply for system approval.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-637, MCA

NEW RULE VII CONTINUATION OF APPROVED ACCOUNTING AND REPORTING SYSTEM WHEN ACCOUNTING SYSTEM VENDOR'S LICENSE LAPSES (1) In the event an accounting system vendor fails to renew its license, an operator may continue to operate the approved accounting and reporting system purchased from the vendor if the approved accounting and reporting system requires no modification or support from a vendor to comply with [NEW RULE III].

(2) In the event an accounting system vendor fails to renew its license and the conditions for continuation cannot be met, operators using the system shall have 120 days to convert to a new system.

AUTH: 23-5-621, MCA
IMP: 23-5-637, MCA

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

23.16.101 DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) "Accounting system vendor" means a person who sells or leases an accounting system to a licensed gambling manufacturer, route operator, or gambling operator to be utilized as an approved automated accounting and reporting system, as provided in 23-5-637, MCA.

(1) through (19) remain the same but are renumbered (2) through (20).

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-112, 23-5-118, 23-5-176, 23-5-629, 23-5-637, MCA

23.16.102 APPLICATION FOR GAMBLING LICENSE - LICENSE FEE

(1) Every person working or acting as a card dealer, operator, route operator, card room contractor, manufacturer, distributor, manufacturer of electronic live bingo or keno equipment, sports tab game seller, accounting system vendor, or manufacturer of illegal devices, as defined by Title 23, chapter 5, MCA, and by these rules, any nonprofit organization, or any other person required by statute or rule to hold a license issued by the department, must possess a valid license issued by the department. All licenses expire annually at midnight on June 30 unless otherwise provided for in these rules. All owners or owners of an interest, as that term is defined under ARM 23.16.101, are considered applicants for all licensing purposes within this chapter.

(2) through (5) remain the same.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 16-4-414, 23-5-115, 23-5-177, 23-5-637, MCA

23.16.1911 INFORMATION TO BE PROVIDED TO THE DEPARTMENT

(1) A licensed manufacturer or accounting system vendor may be required to provide information to the department necessary to ensure a machine or automated

accounting and reporting system is in compliance with the act and these rules. The information shall include, but not be limited to:

(a) through (l)(vii) remain the same.

(m) truth tables for all PALs used; ~~and~~

(n) an operators manual for each peripheral device utilized~~.~~; and

(o) additional information to be provided for automated accounting and reporting systems:

(i) electronic copy of an output data file produced by the system for communication to the department. File shall contain no less than one hundred records for each of the following classes:

(A) video gambling machine startup;

(B) video gambling machine electronic meter period;

(C) video gambling machine event (if applicable);

(D) video gambling machine before service (if applicable);

(E) video gambling machine after service (if applicable); and

(F) video gambling machine end.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-607, 23-5-621, 23-5-631, 23-5-637, MCA

23.16.1918 ~~VIDEO GAMBLING MACHINES~~ TESTING FEES (1) Each person submitting a video gambling machine, an automated accounting and reporting system, or a modification ~~that changes the play or operation of a~~ to an approved video gambling machine or an automated accounting and reporting system for testing and department approval must:

(a) be licensed as a manufacturer and/or accounting system vendor within the state of Montana;

(b) at the time of submission deposit with the department a sum of money to ~~cover the costs of the~~ begin testing ~~service~~. This sum is to be as follows:

(i) video gambling machines, $3,000;

(ii) automated accounting and reporting system, $2,000;

~~(ii)~~(iii) modification to ~~a~~ an approved video gambling machine ~~that alters the play or operation of the machine and requires approval~~ or automated accounting and reporting system, $300.

(2) and (3) remain the same.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-631, 23-5-637, MCA

5. RATIONALE AND JUSTIFICATION New Rule I establishes a vendor license for persons who sell or lease approved automated accounting and reporting systems. The need for the rule arises from the public policy statement in 23-5-110(1)(b), MCA, that directs the department to protect the gambling public from unscrupulous vendors. The rule is required at this time because the department is developing a new database and the time is approaching to test and license the accounting systems that will be purchased by gambling operators as part of the system. The department is given authority to draft rules related to the process for

approving automated accounting and reporting systems by 23-5-621, MCA. This rule will directly affect an estimated five accounting system vendors and indirectly affect approximately 1,600 gambling operators. The fiscal impact of the rule will be the $2,000 licensing fee for accounting system vendors. The fee will reimburse the department for costs related to conducting a background investigation of new applicants for licenses. The department may waive the fee for persons who currently have a manufacturer, operator, or route operator license. The department estimates that the majority of potential vendor licensees are already licensed as manufacturers, operators, or route operators. The department estimates that one to three vendors will not have the licensing fee waived, which would create a total annual impact of $2,000 to $6,000.

New Rule II sets out the specifications for approved automated accounting and reporting systems. The department is provided authority to approve automated accounting and reporting systems to perform the duties of the department by 23-5-637, MCA. The department is provided specific authority to adopt rules describing specifications of an approved automated accounting and reporting system by 23-5-621, MCA. The rule is required at this time because the department is developing a new database and the time is approaching to test and license the accounting systems that will be purchased by gambling operators as part of the system. This rule will directly affect an estimated five accounting system vendors and indirectly affect approximately 1,600 gambling operators. This rule should have no direct fiscal impact.

New Rule III provides rules for accounting system vendors to seek approval to any modifications of approved accounting and reporting systems. The department is provided authority to approve automated accounting and reporting systems to perform the duties of the department by 23-5-637, MCA. The department is provided specific authority to adopt rules describing specifications of an approved automated accounting and reporting system by 23-5-621, MCA. The rule is required at this time because the department is developing a new database and the time is approaching to test and license the accounting systems that will be purchased by gambling operators as part of the system. This rule will directly affect an estimated five accounting system vendors and should have no direct fiscal impact.

New Rule IV implements the statutory prohibition on approved automated accounting and reporting systems being used for player tracking. Section 23-5-621, MCA, directs the department to adopt rules to prohibit the use of an approved automated accounting and reporting system for player tracking. The rules are necessary because the department is approaching the time to approve systems and this prohibition must be implemented. The rule will indirectly affect 1,600 gambling operators and should have no fiscal impact.

New Rule V authorizes the department to enter into agreements to test new automated accounting and reporting systems and sets out a description of the information that the department will require to be reported by the automated

accounting and reporting system. The department is provided authority to approve automated accounting and reporting systems to perform the duties of the department by 23-5-637, MCA. The department is provided specific authority to adopt rules describing specifications of an approved automated accounting and reporting system by 23-5-621, MCA. The rule is required at this time because the department is developing a new database and the time is approaching to test and license the accounting systems that will be purchased by gambling operators as part of the system. This rule will directly affect an estimated five accounting system vendors and indirectly affect approximately 1,600 gambling operators. This rule should have no direct fiscal impact.

New Rule VI describes the process for a gambling machine owner to apply to the department to utilize an approved automated accounting and reporting system. The department is provided authority to approve automated accounting and reporting systems to perform the duties of the department by 23-5-637, MCA. The department is provided specific authority to allow licensed operators to utilize an approved automated accounting and reporting system by 23-5-621, MCA. The rule is required at this time because the department is developing a new database and the time is approaching to begin to test and license the accounting systems that will be purchased by gambling operators as part of the system. This rule will directly affect approximately 1,600 gambling operators. This rule should have no direct fiscal impact.

New Rule VII provides for the continuation of an approved automated accounting and reporting system if the system vendor loses or fails to renew the vendor's license. The department is provided authority to approve automated accounting and reporting systems to perform the duties of the department by 23-5-637, MCA. The department is provided specific authority to adopt rules describing specifications of an approved automated accounting and reporting system by 23-5-621, MCA. The rule is required at this time because the department is developing a new database and the time is approaching to test and license the accounting systems that will be purchased by gambling operators as part of the system. The rule will indirectly affect 1,600 gambling operators and should have no fiscal impact.

Changes to ARM 23.16.101 provide a definition of an "accounting system vendor." The need for the rule arises from the public policy statement in 23-5-110(1)(b), MCA, that directs the department to protect the gambling public from unscrupulous vendors. The rule is required at this time because the department is developing a new database and the time is approaching to test and license the accounting systems that will be purchased by gambling operators as part of the system. The department is given authority to draft rules related to the process for approving automated accounting and reporting systems by 23-5-621, MCA. This rule will directly affect an estimated five accounting system vendors. This new definition standing alone has no fiscal impact.

Changes to ARM 23.16.102 add an "accounting system vendor" to the

persons who must obtain an annual license. The need for the rule arises from the public policy statement in 23-5-110(1)(b), MCA, which directs the department to protect the gambling public from unscrupulous vendors. The rule is required at this time because the department is developing a new database and the time is approaching to test and license the accounting systems that will be purchased by gambling operators as part of the system. The department is given authority to draft rules related to the process for approving automated accounting and reporting systems by 23-5-621, MCA. This rule will directly affect an estimated five accounting system vendors.

Changes to ARM 23.16.1911 set out the information that is to be provided to the department for testing automated accounting and reporting systems. The department is provided authority to approve automated accounting and reporting systems to perform the duties of the department by 23-5-637, MCA. The department is provided specific authority to adopt rules describing specifications of an approved automated accounting and reporting system by 23-5-621, MCA. The rule is required at this time because the department is developing a new database and the time is approaching to test and license the accounting systems that will be purchased by gambling operators as part of the system. This rule will directly affect an estimated five accounting system vendors and should have no direct fiscal impact.

Changes to ARM 23.16.1918 set out the fees for testing automated accounting and reporting systems. The department is provided authority to approve automated accounting and reporting systems to perform the duties of the department by 23-5-637, MCA. The department is provided specific authority to charge fees for examination of video gambling machines and associated equipment by 23-5-631, MCA. The rule is required at this time because the department is developing a new database and the time is approaching to test and license the accounting systems that will be purchased by gambling operators as part of the system. This rule will directly affect an estimated five accounting system vendors. The fiscal impact will be that each vendor will be required to pay the department's costs of testing the system which will require an initial $2,000 deposit. The department estimates that two to five systems will pay fees for testing which would create a total annual impact ranging from $4,000 to $10,000.

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 Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than June 15, 2006.

7. Cregg Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

8. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who

wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

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

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General
Department of Justice

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State May 8, 2006.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.17.127, pertaining to prevailing wage rates for public work projects - building construction services	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 9, 2006, at 10:00 a.m. a public hearing will be held in the first floor conference room, Room 104 of the Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry (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., on June 5, 2006, to advise us of the nature of the accommodation that you need. Please contact Mike Hohn, Research and Analysis Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5567; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-2638; e-mail MHohn@mt.gov.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) through (1)(d) remain the same.

(e) The current building construction services rates are contained in the ~~2005~~ 2006 version of "The State of Montana Prevailing Wage Rates - Building Construction Services" publication.

(f) through (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431, 39-3-202, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to amend ARM 24.17.127 to update the building construction services rates. Pursuant to Chapter 517, Laws of 2001 (House Bill 500), the department is to conduct an annual survey of contractors in order to set the standard prevailing rate of wages for construction services. Prior to the enactment of Chap. 517, L. of 2001, the department conducted biennial surveys to establish the wage rates. There is reasonable necessity to amend the prevailing wages for building construction services, which were last updated in 2005. The

department notes that prevailing wage rates for heavy construction and highway construction services were updated effective March 10, 2006.

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 Todd Younkin, Research and Analysis Bureau, Workforce Services Division, Department of Labor and Industry, 840 Helena Avenue, P.O. Box 1728, Helena, Montana 59624-1728, by facsimile to (406) 444-2638, or by e-mail to tyounkin@mt.gov, and must be received no later than 5:00 p.m., June 16, 2006.

5. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at http://dli.mt.gov/events/calendar.asp. 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.

6. An electronic copy of the proposed 2006 publication, identified as "preliminary building construction rates" is available and can be accessed on-line via the internet at www.ourfactsyourfuture.org, under the listing "publications."

A printed version of the proposed 2006 publication is also available by contacting Mike Hohn, at the address or telephone numbers listed in paragraph 2.

7. The department 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 Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

9. The department's Hearing Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ DORE SCHWINDEN
Dore Schwinden, Deputy Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified by the Secretary of State May 8, 2006

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.30.102, relating to occupational safety matters in public sector employment) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 9, 2006, at 11:00 a.m., or as soon thereafter as is feasible, a public hearing will be held in room 104 (the first floor conference room), of the Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry (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., on June 5, 2006, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Sandra Mihalik, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6418; fax (406) 444-9396; TDD (406) 444-0532; or e-mail smihalik@mt.gov.

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

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR PUBLIC SECTOR EMPLOYMENT (1) and (2) remain the same.

(3) The Department of Labor and Industry adopts a safety code for every place of employment conducted by a public sector employer. This safety code adopts by reference the following occupational safety and health standards found in the Code of Federal Regulations, as of ~~July 1, 2005~~ July 1, 2006:

(a) Title 29, part 1910; and

(b) Title 29, part 1926.

(4) All sections adopted by reference are binding on every public sector employer even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards adopted above and printed in the Code of Federal Regulations, Title 29, as of ~~July 1, 2005~~ July 1, 2006, are considered under this rule as the printed form of the safety code, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code. All the provisions, remedies, and penalties found in the Montana Safety Act apply to the administration of the provisions of the safety code adopted by this rule.

(5) remains the same.

AUTH: 50-71-311, MCA
IMP: 50-71-311, 50-71-312, MCA

REASON: There is reasonable necessity to amend this rule in order to incorporate by reference the current federal rules promulgated by the Occupational Health and Safety Administration (OSHA). These rules are periodically updated to ensure that public sector employers and employees have essentially the same duties and protections that apply to employers and employees in the private sector. The July 1, 2006, version of the Code of Federal Regulations is proposed for incorporation by reference because it is the most current version.

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 Chris Catlett, Bureau Chief, Safety Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; by facsimile to (406) 444-9396; or by e-mail to smihalik@mt.gov, and must be received no later than 5:00 p.m., June 16, 2006.

5. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at http://dli.mt.gov/events/calendar.asp. 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.

6. The department 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 Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

8. The department's Hearing Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ DORE SCHWINDEN
Dore Schwinden, Deputy Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified by the Secretary of State May 8, 2006

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

In the matter of the amendment of ARM 37.30.405 pertaining to Vocational Rehabilitation Program Payment for Services	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 2006, the Department of Public Health and Human Services proposes to amend the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on June 9, 2006, 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; e-mail dphhslegal@mt.gov.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.30.405 VOCATIONAL REHABILITATION PROGRAM: PAYMENT FOR SERVICES (1) The consumer, except as otherwise specifically authorized in this subchapter, is responsible for paying the costs for the provision of any vocational rehabilitation services that are authorized to be provided to the consumer through the consumer's IPE.

(2) An applicant or a consumer is not responsible for paying the costs for the provision of the following vocational rehabilitation services:

(a) assessment for determining eligibility and priority for vocational rehabilitation services except for trial work experience type services provided to a person with a significant disability during an exploration of the person's abilities, capabilities, and capacity to perform in work situations;

(b) vocational rehabilitation counseling and guidance;

(c) referral and related services;

(d) job development and placement related services;

(e) personal assistance services; and

(f) any auxiliary aid or service or other rehabilitation technology, including reader services, that the department determines a person with a disability may require in order to apply for or receive vocational rehabilitation services.

(3) A consumer who is eligible for social security old age, survivors and disability insurance (OASDI) or supplemental security income (SSI) benefits under

Titles II and XVI of the Social Security Act is not responsible for paying the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE.

(4) The department may pay for the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE to the extent that the consumer's income and financial resources, determined as provided in this rule and ARM 37.30.407, do not exceed the maximum amounts allowable for income and for financial resources calculated by the department as provided for in (4)(a) and (b).

(a) The maximum allowable level for income is a prospective 12 month annual income calculated at 250% of the ~~2003~~ 2006 U.S. ~~d~~Department of ~~h~~Health and ~~h~~Human ~~s~~Services poverty guidelines for households of different sizes.

(b) The maximum allowable value for financial resources is calculated at 50% of the maximum allowable annual income level.

(5) The department does not pay for the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE to the extent that those costs are reimbursable through another governmental program or there is another source of funding that is available to be applied to the costs of all or a portion of the services.

(a) If benefits from any other program or other sources of funding are not immediately available for the payment of any or all of the costs of services for the consumer, the department may temporarily pay for the costs for the provision of services until those other benefits or other sources of funding become available.

(b) If the determination of the availability of benefits or other sources of funding would delay the provision of vocational rehabilitation services to a consumer who is at extreme medical risk or who is to receive an immediate job placement opportunity, the department may temporarily pay for the costs for the provision of services until those other benefits become available. The department makes the determination of extreme medical risk based upon medical evidence provided by an appropriate licensed professional.

(6) The responsibility of a consumer for the payment of the costs for the provision of services is initially determined by the department prior to the provision to the consumer of any services listed in the consumer's IPE.

(a) The financial responsibility of a consumer is redetermined at any time that there is a change in the income and resources available to the consumer.

AUTH: 53-7-102, 53-7-206, 53-7-315, MCA
IMP: 53-7-102, 53-7-105, 53-7-108, 53-7-310, MCA

3. The proposed amendment is to ARM 37.30.405, Vocational Rehabilitation Program: Payment For Services. This rule sets forth the criteria that allow for the department to pay for services being made available to persons who are eligible for vocational rehabilitation services. The rule provides that the payment for services by the department may occur if the consumer's income and financial resources do not exceed maximum levels for income and resources established through the rule.

The proposed amendment revises the maximum level of allowable income. Currently the rule provides that the maximum level is 250% of the 2003 U.S. Department of Health and Human Services poverty guidelines for households. The proposed amendment would revise this level by replacing the 2003 guidelines with the 2006 guidelines.

The department some time ago in reviewing the possible means by which to set maximum income levels for purposes of eligibility for financial support in service purchase determined that the poverty guidelines were the most appropriate means. The poverty guidelines have been established by the federal government for use in many respects inclusive of eligibility determinations for certain federally funded assistance programs. The guidelines are based upon an established methodology and are annually revised. There is broad national acceptance and use of the guidelines. The department considered establishing its own methodology but found that it did not have the resources or expertise by which to develop and maintain its own methodology. The 2006 guidelines and methodology can be viewed on the U.S. Department of Health and Human Services website at www.aspe.hha.gov/poverty/06poverty.shtml.

This proposed change, implementing the most recent set of relevant poverty level income amounts, is necessary so as to maintain the currency of the financial criteria. The older amounts fail to account for various economic changes over time such as inflation that are factors in dynamically defining and distinguishing a class of persons with limited income who are at or below the poverty level for purposes of federal programs and via this incorporated reference are the intended beneficiaries of the vocational rehabilitation services. Implementation of the most recent poverty guidelines assures the continuation of the appropriate coverage population.

4. Interested persons may submit their data, views, or arguments concerning the proposed action in writing 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 June 15, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views, and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov no later than 5:00 p.m. on June 15, 2006.

6. 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 649 based on the 6,489 of individuals served in 2006 affected by rules covering vocational rehabilitation services.

/s/ Dawn Sliva
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State May 8, 2006.

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

In the matter of the amendment of ARM 37.12.401 pertaining to laboratory testing fees	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 2006, the Department of Public Health and Human Services proposes to amend the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on June 6, 2006, 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; e-mail dphhslegal@mt.gov.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.12.401 LABORATORY FEES FOR ANALYSES (1) Fees for clinical and environmental analyses performed by the laboratory of the ~~d~~Department of ~~p~~Public ~~h~~Health and ~~h~~Human ~~s~~Services are set to reflect the actual costs of the tests and services provided. ~~as follows, with the exception noted in (3):~~

~~(a) Microbiology Tests~~	~~Fee~~
~~(i) Anaerobic Culture~~	~~$ 30.83~~
~~(ii) Autoclave Monitor~~	~~16.22~~
~~(iii) Bacterial Culture~~	~~28.66~~
~~(iv) Bacterial Screen~~	~~23.80~~
~~(v) C Diff Toxin~~	~~21.20~~
~~(vi) Chemclave Monitor~~	~~16.22~~
~~(vii) Chlamydia Amplification~~	~~18.93~~
~~(viii) EHEC Toxin~~	~~21.20~~
~~(ix) Enteric Panel~~	~~28.66~~
~~(x) Gonorrhea Amplification~~	~~18.93~~
~~(xi) Pertussis DFA~~	~~19.03~~
~~(xii) Legionella DFA~~	~~19.03~~
~~(b) Miscellaneous Test~~	
~~(i) Test sent out~~	~~8.11~~
~~(ii) Dangerous goods~~	~~54.08~~

~~(c) Mycology Tests~~	
~~(i) Fungal Culture, Skin~~	~~30.46~~
~~(ii) Fungal Culture, Other~~	~~30.46~~
~~(iii) Fungal Culture, Blood~~	~~30.46~~
~~(d) Newborn Tests~~	
~~(i) IRT (Cystic Fibrosis)~~	~~9.88~~
~~(ii) Galactose~~	~~11.10~~
~~(iii) PKU~~	~~10.19~~
~~(iv) Hemoglobinopathy~~	~~8.17~~
~~(v) Thyroxine~~	~~9.88~~
~~(vi) TSH~~	~~8.71~~
~~(e) Parasitology Tests~~	
~~(i) Crypto/Cyclo stain~~	~~22.93~~
~~(ii) O & P Conc. ID~~	~~12.44~~
~~(iii) O & P, Trichrome~~	~~10.49~~
~~(f) Serology Tests~~	
~~(i) Blood Lead~~	~~16.22~~
~~(ii) Brucella~~	~~14.87~~
~~(iii) CMV, IgG~~	~~16.44~~
~~(iv) CMV, IgM~~	~~29.53~~
~~(v) Colorado Tick Fever~~	~~16.44~~
~~(vi) FTA~~	~~26.72~~
~~(vii) Hantavirus IgG~~	~~37.00~~
~~(viii) Hantavirus IgM~~	~~37.00~~
~~(ix) Hepatitis A IgM~~	~~$ 25.00~~
~~(x) Hepatitis B core IgM~~	~~25.00~~
~~(xi) Hepatitis B Antibody~~	~~19.25~~
~~(xii) Hepatitis B core total~~	~~28.66~~
~~(xiii) Hep B Surface Antigen~~	~~17.09~~
~~(xiv) Hepatitis C~~	~~28.66~~
~~(xv) Herpes simplex 1 & 2~~	~~32.88~~
~~(xvi) HIV screen~~	~~13.84~~
~~(xvii) HIV Western Blot~~	~~96.00~~
~~(xviii) Legionella~~	~~16.44~~
~~(xix) Mumps~~	~~16.44~~
~~(xx) Q Fever~~	~~16.44~~
~~(xxi) RMSF~~	~~16.44~~
~~(xxii) Rubella~~	~~16.44~~
~~(xxiii) Rubeola~~	~~16.44~~
~~(xxiv) Tularemia~~	~~14.87~~
~~(xxv) Toxo IgG~~	~~16.44~~
~~(xxvi) Toxo IgM~~	~~29.53~~
~~(xxvii) Varicella Zoster~~	~~16.44~~
~~(xxviii) VDRL, qua~~	~~10.83~~
~~(xxix) West Nile Virus~~	~~15.00~~
~~(xxx) VDRL, quant~~	~~10.98~~
~~(xxxi) SLE~~	~~15.00~~

~~(g) Tuberculosis Tests~~

~~(i) Acid Fast Stain~~	~~11.46~~
~~(ii) Mycobact. Culture~~	~~17.01~~
~~(iii) Mycobact. Concentration~~	~~9.59~~
~~(iv) Mycobact. Suscept., each drug~~	~~12.00~~
~~(v) Mycobact. Sp. Probe~~	~~19.03~~
~~(vi) Mycobact. Avium Probe~~	~~19.03~~
~~(vii) Mycobact. TB Probe~~	~~19.03~~
~~(viii) Mycobact. TB AMP~~	~~145.60~~

~~(h) Virology Tests~~

~~(i) Chlamydia Culture~~	~~30.50~~
~~(ii) Herpes Culture~~	~~20.00~~
~~(iii) Direct Detection (RSV, VZV, HSV)~~	~~19.03~~
~~(iv) Virus ID (IFA)~~	~~9.52~~
~~(v) Viral Culture~~	~~30.50~~
~~(vi) Virus ID (neutralize)~~	~~40.00~~

~~(i) Molecular Testing~~

~~(i) PCR, 1 agent~~	~~60.00~~
~~(ii) PFGE, 1 enzyme~~	~~66.25~~
~~(iii) Hep C, PCR~~	~~101.92~~

~~(2) Effective December 1, 2003, fees for environmental analyses performed by the laboratory of the department of public health and human services are as follows, with the exceptions noted in (3) and (4):~~

~~(a) Fees for nutrient analyses are as follows:~~

~~(i) Nitrate plus nitrate as N~~	~~$ 14.50~~
~~(ii) Nitrite~~	~~14.50~~
~~(iii) Ortho phosphorus~~	~~14.50~~
~~(iv) Soluble phosphorus~~	~~14.50~~
~~(v) Total ammonia as N~~	~~14.50~~
~~(vi) Total phosphorus~~	~~24.75~~
~~(vii) Total kjeldahl nitrogen~~	~~28.75~~

~~(b) Fees for metal analysis by ICP are as follows:~~

~~(i) Aluminum~~	~~9.20~~
~~(ii) Antimony~~	~~17.25~~
~~(iii) Arsenic~~	~~17.25~~
~~(iv) Barium~~	~~9.20~~
~~(v) Beryllium~~	~~9.20~~
~~(vi) Bismuth~~	~~9.20~~
~~(vii) Boron~~	~~9.20~~
~~(viii) Calcium~~	~~9.20~~
~~(ix) Cadmium~~	~~9.20~~
~~(x) Cobalt~~	~~9.20~~
~~(xi) Copper~~	~~9.20~~
~~(xii) Chromium~~	~~9.20~~
~~(xiii) Dust wipes~~	~~18.00~~
~~(xiv) Iron~~	~~9.20~~
~~(xv) Lead~~	~~17.25~~

~~(xvi) Lithium 9.20~~
~~(xvii) Magnesium 9.20~~
~~(xviii) Manganese 9.20~~
~~(xix) Metals scan, water, 17 element 34.50~~
~~(xx) Metals scan, water, 25 element 86.25~~
~~(xxi) Metals scan, solids, 20 element 63.25~~
~~(xxii) Molybdenum 9.20~~
~~(xxiii) Nickel 9.20~~
~~(xxiv) Potassium 9.20~~
~~(xxv) Silicon 9.20~~
~~(xxvi) Silver 9.20~~
~~(xxvii) Sodium 9.20~~
~~(xxviii) Strontium 9.20~~
~~(xxix) Tin 9.20~~
~~(xxx) Titanium 9.20~~
~~(xxxi) Vanadium 9.20~~
~~(xxxii) Zinc 9.20~~
~~(xxxiii) Selenium 17.25~~
~~(xxxiv) Thallium 17.25~~
~~(c) Fees for organic analyses are as follows:~~
~~(i) Organic analyses in drinking water:~~
~~(A) 505 - Organohalide pesticides $ 172.50~~
~~(B) 508 - Chlorinated pesticides 172.50~~
~~(C) 515 - Chlorophenoxy herbicides 149.50~~
~~(D) 525 - Synthetic organic compounds 276.00~~
~~(E) 531 - Carbamate pesticides 172.50~~
~~(F) Haloacetic acids 149.50~~
~~(G) Trihalomethanes 103.50~~
~~(H) VOC - volatile organic compounds 126.50~~
~~(ii) For organic analyses in other substrates, EPA 600 and 8000 series, the fees are:~~
~~(A) Organohalide pesticides 230.00~~
~~(B) Chlorinated pesticides 230.00~~
~~(C) Chlorophenoxy herbicides 265.00~~
~~(D) Synthetic organic compounds 276.00~~
~~(E) Carbamate pesticides 230.00~~
~~(F) Haloacetic acids 207.00~~
~~(G) Trihalomethanes 150.00~~
~~(H) VOC - volatile organic compounds 276.00~~
~~(d) Fees for fuel analyses are as follows:~~
~~(i) Blue dye in fuel 8.63~~
~~(ii) Red dye in fuel 8.63~~
~~(iii) Dyed fuel combo (excludes blue dye in fuel) 55.00~~
~~(iv) Diesel characterization 34.50~~
~~(v) Sulfur by XRF 23.00~~
~~(e) Fees for commons are as follows:~~

~~(i) Alkalinity~~	~~15.00~~
~~(ii) Chloride~~	~~20.00~~
~~(iii) Conductivity~~	~~6.90~~
~~(iv) Fluoride~~	~~17.25~~
~~(v) pH~~	~~6.90~~
~~(vi) Sulfate~~	~~20.00~~
~~(vii) TDS~~	~~9.20~~
~~(viii) TSS~~	~~9.20~~
~~(ix) Volatile suspended solids~~	~~25.76~~
~~(f) Fees for air quality analyses are as follows:~~	
~~(i) Dustfall~~	~~34.50~~
~~(ii) Fiberglass hi vol filters~~	~~7.00~~
~~(iii) PM 10~~	~~7.00~~
~~(iv) PM 2.5~~	~~17.25~~
~~(v) PM 2.5p~~	~~23.00~~
~~(vi) Lead analysis on filters~~	~~19.55~~
~~(g) Fees for miscellaneous tests are as follows:~~	
~~(i) Acidity~~	~~14.50~~
~~(ii) BOD~~	~~$ 40.25~~
~~(iii) Chlorophyll~~	~~31.75~~
~~(iv) CBOD~~	~~40.25~~
~~(v) COD~~	~~40.25~~
~~(vi) Color~~	~~23.00~~
~~(vii) Cyanide - drinking water~~	~~40.25~~
~~(viii) Hardness~~	~~20.70~~
~~(ix) Hexavalent chromium~~	~~28.75~~
~~(x) Mercury~~	~~41.40~~
~~(xi) Mercury composited~~	~~14.50~~
~~(xii) Oil and grease~~	~~51.75~~
~~(xiii) Phenol~~	~~28.75~~
~~(xiv) Sulfide~~	~~40.25~~
~~(xv) TOC~~	~~29.90~~
~~(xvi) Turbidity~~	~~6.90~~
~~(h) Fees for microbiology testing are as follows:~~	
~~(i) Total coliform~~	~~19.00~~
~~(ii) Fecal coliform - membrane filtration~~	~~19.00~~
~~(iii) Iron bacteria~~	~~19.00~~
~~(iv) Sulfur bacteria~~	~~19.00~~
~~(v) Heterotrophic plate count~~	~~19.00~~
~~(i) Fees for special handling are as follows:~~	
~~(i) Rush fee - per sample order~~	~~10.00~~
~~(ii) Microwave digestion~~	~~19.55~~
~~(iii) Nutrient extraction~~	~~15.00~~
~~(iv) Total metals digestion~~	~~17.25~~
~~(v) Total recoverable metals digestion~~	~~11.50~~
~~(vi) VOC extraction - TCLP~~	~~57.50~~
~~(vii) Metals extraction - TCLP~~	~~51.75~~

(2) The Department of Public Health and Human Services shall maintain a list of all tests available from the lab and the price of each test. The department adopts and incorporates by reference the Laboratory Test Fee List effective July 1, 2006, which shall be available on the website of the Department of Public Health and Human Services at www.dphhs.mt.gov, and by mail upon request to the lab at the Department of Public Health and Human Services, Public Health and Safety Division, P.O. Box 6489, Helena, MT 59604-6489.

(3) The fees ~~specified in (1) and (2)~~ for a specific lab test will be lowered by the ~~d~~Department of ~~p~~Public ~~h~~Health and ~~h~~Human ~~s~~Services to a level not exceeding the cost to the department of the test in question whenever a change of analysis method warrants lower fees.

(4) Fees for analyses other than those listed ~~in (1) and (2)~~ will be established at the level of comparable analyses.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

3. Title 37, chapter 12, rule 401 of the Administrative Rules of Montana (ARM) provides information regarding the fees charged for biological and environmental tests performed by the Montana state laboratory, in conformity with state statute. The Department of Public Health and Human Services (the department) proposes the following modifications to existing rules to bring the fees charged for lab services in line with the actual current costs associated with providing those services. As well, the department proposes to modify the forum of distribution of the lab service and fee list to ensure timely notification of additions to lab services, and to provide greater accessibility to the most current list of services and fees by all Montana citizens wanting to utilize the services to the state laboratory.

The proposed fee increases will result in a cumulative increase in fees for all laboratory services of approximately $182,000, affecting the approximately 1,000 annual customers of the state laboratory. The fee increases proposed represent the minimum increases in fees required to maintain the state laboratory's current level of services, and are reasonably necessary to allow the state laboratory to fulfill its obligations as an adjunct to public health and health care functions in the state of Montana.

The department has modified ARM 37.12.401(1) and (2) to clarify that the testing services provided by the state laboratory include both clinical (biological) testing and environmental testing services. These modifications do not indicate a change in functioning by the laboratory, but merely clarify for citizens looking for laboratory services what services may be obtained from the state laboratory.

In addition, these sections have been modified to identify the pricing methodology applicable to state laboratory services and to remove the specific list of laboratory tests and associated fees from this rule in favor of distribution via the internet and by mail. The department believes that making the service and fee list

available via the internet, with the list also being available by mail upon request, will ensure that all Montana citizens will have timely access to a complete, accurate list of testing services and their associated fees. As well, the department believes that the information is more readily available to more people and at a far lower cost if it is available via the internet and mail than if it is available only in the ARM or by phone call to the laboratory.

The department considered continuing the practice of including the service and fee list in the ARM, but concluded that such continued practice would result in less accurate information being available to consumers of state laboratory services as the list could only be updated to include new services pursuant to a rule modification.

Finally, the fees applicable to all testing services have been increased to account for the increased costs incurred by the laboratory over the past several years, including increased personnel costs, increased costs of supplies, and increased costs of new and replacement testing equipment.

The department considered not increasing its testing fees, but concluded that doing so would result in the laboratory spending more to provide services than it would recover in service fees, and eventually would render the laboratory unable to provide any level of service.

ARM 37.12.401(3) and (4) have been modified to reflect the removal of the service/fee list from the ARM.

Other Modifications

Other minor modifications may have been made within these rules to conform the rules to the requirements of the Secretary of State regarding rule drafting, including but not limited to, formatting, numbering, capitalization, hyphenation, and internal reference to other provisions/rules. These modifications are not substantive and do not modify the meaning or intent of the rules.

4. 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 June 15, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views, and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request,

along with any written comments to 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@mt.gov no later than 5:00 p.m. on June 15, 2006.

6. 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 95 based on the 950 customers affected by rules covering the state laboratory fees and services.

/s/ Russell E. Cater
Rule Reviewer

/s/ Russell E. Cater for
Director, Public Health and Human Services

Certified to the Secretary of State May 8, 2006.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 42.21.158 relating to property reporting requirements	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 7, 2006, at 9:00 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.21.158 relating to property reporting requirements.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., June 1, 2006, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.21.158 PROPERTY REPORTING REQUIREMENTS (1) remains the same.

(2) If the aggregate market value of a person or business entity's class eight property on a statewide basis is ~~$5,000~~ $20,000 or less, the person or business entity is exempt from class eight taxation. ~~For class eight property, future year reporting requirements will not apply to such a person or business entity unless the person or business entity acquires new class eight property or a departmental review as provided in 15-8-104, MCA, indicates a need to report.~~ In order to determine whether individual taxpayers or business entities are below that threshold, the department will require all persons or business entities with an aggregate market value over $5,000 to report their class eight property for the 2006 tax year. In subsequent years of the reappraisal cycle, the department will not require annual reporting for those taxpayers that have demonstrated they are below the $20,000 exemption threshold for the 2006 tax year, unless the person or business entity acquires new class eight property or a departmental review as provided in 15-8-104, MCA, indicates a need to report. To ensure fair and accurate reporting of all taxable class eight property, the department may require all persons or business entities to report their class eight property periodically. It is the department's current plan to

require a report of all class eight property for tax year 2010 and, if judged necessary, for additional future tax years at intervals to be determined.

(3) The department will provide educational information on the class eight personal property exemption to all individual taxpayers or business entities the department is aware of that currently have class eight business personal property.

~~(3)~~(4) ~~Taxpayers~~ Except as provided in (2), taxpayers having taxable property in the state of Montana on January 1 of each year must complete the statement as provided for in 15-8-301, MCA. With the exception of livestock owners, the taxpayer has 30 days from the date of receipt of any request for information to respond to the department's request. The department may grant an extension if the taxpayer requests such an extension during the 30-day period. No extension may be granted that allows the taxpayer to report after March 15.

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

~~(5)~~(6) If the taxpayer fails to respond to the department request for information during the timeframes set forth in (2), (3), and (4), the department shall assess the property under the provisions of 15-1-303, 15-8-309, and 15-24-904, MCA, or any other applicable statute.

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

(8) If the department determines that one or more of the reports required in (1) have been filed by multiple jointly owned enterprises, or if the department determines that property has been transferred to or otherwise placed under the ownership and control of a family member or other individual within 12 months prior to the filing of the report, the department shall:

(a) in the case of jointly owned business enterprises, determine whether the enterprises were created for a valid business purpose other than the minimization of tax liability; or

(b) in the case of an individual, determine whether the transfer was made for a valid purpose other than the minimization of the transferor's tax liability.

(9) If the department determines that no valid reason other than the minimization of tax liability exists, the department will aggregate the market value of all of the enterprises' or individual's class eight property.

~~(7)~~(10) This rule is effective for tax years beginning after December 31, ~~1999~~ 2005.

AUTH: 15-1-201, MCA
IMP: 15-1-303, 15-8-104, 15-8-301, 15-8-303, 15-8-309, 15-24-902, 15-24-903, 15-24-904, 15-24-905~~, and 15-24-920~~, MCA

REASONABLE NECESSITY: The 2005 legislative session enacted Senate Bill 48, which increased the cap on the exempt aggregate market value of class eight property from $5,000 to $20,000. The amendments to (2), (3), and (5) reflect the change in law. It's not unusual for taxpayers to own more than one business or to have multiple business locations. As part of the business operation, they often times have business equipment at each of the locations. New (8) and (9) are proposed to clarify the assessment of class eight business equipment properties in those instances. The department will not aggregate the values of a taxpayer's separate businesses or a business at different locations, if the business(es) were created or

transferred for a valid reason. However, in the rare event that property is reported solely to minimize tax liability, the department will combine the values at all of the taxpayer's business locations before it determines whether or not the exemption will be granted. Section (10) is amended to change the applicable tax year for which this rule applies. Section 15-24-920, MCA, is being deleted as an implementing cite because it was repealed.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 7701
Helena, Montana 59604-7701
and must be received no later than June 16, 2006.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State May 8, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 42.20.106 and ARM 42.20.117 relating to manufactured and mobile homes	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 7, 2006, at 10:30 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules relating to manufactured and mobile homes.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., June 1, 2006, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.20.106 DEFINITIONS The following definitions apply to this subchapter:

(1) "Attached" as it applies to a manufactured or mobile home means being bolted or cable anchored to the permanent foundation.

(1) remains the same but is renumbered (2).

~~(2)~~(3) "Comparable properties" means properties that have similar utility, use, function, and are of a similar type as the subject property. Comparable properties must be influenced by the same set of economic trends, and physical, economic, governmental, and social factors as the subject property. Comparable properties must have the potential of a similar use as the subject property. For any property that does not fit into this definition, the department will rely on the definition of comparable property contained in 15-1-101, MCA.

(a) Within the definition of comparable property in (1), the following types of property are considered comparable:

(i) ~~S~~single-family residences with ancillary improvements are comparable to other single-family residences with ancillary improvements~~.~~;

(ii) ~~M~~multi-family residences are comparable to other multi-family residences~~.~~;

(iii) ~~M~~mobile homes are comparable to other mobile homes~~.~~;

(iv) ~~R~~residential city and town lots are comparable to other residential city and town lots~~.~~;

(v) ~~C~~commercial city and town lots are comparable to other commercial city and town lots~~.~~;

(vi) ~~R~~residential tract land is comparable to other residential tract land~~.~~;

(vii) ~~C~~commercial tract land is comparable to other commercial tract land~~.~~;

(viii) ~~I~~improvements and outbuildings necessary to the operation of a qualified agricultural property are comparable to other improvements and outbuildings on qualified agricultural properties~~.~~;

(ix) ~~O~~one-acre sites beneath improvements on land classified as non-qualified agricultural or forestland are comparable to residential tract land~~.~~;

(x) ~~C~~condominiums are comparable to other condominiums~~.~~;

(xi) ~~I~~industrial improvements are comparable to other industrial improvements~~.~~;

(xii) ~~I~~industrial land is comparable to other industrial land~~.~~; and

(xiii) manufactured homes are comparable to other manufactured homes.

(4) "Concrete stringer" as it applies to a manufactured or mobile home means concrete pad poured in place and embedded on firm soil of adequate bearing capacity to support upright posts.

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

(6) "Embedded" as it applies to a manufactured or mobile home means to fix securely in and below the surface of the surrounding ground.

(7) "Footing" as it applies to a manufactured or mobile home means the projecting base of a foundation, which transmits the building load to the ground.

(8) "Perimeter foundation" as it applies to a manufactured or mobile home means the supporting structure, running the total length of all exterior walls of the manufactured home, which transmits the load of the home resting upon it to the earth.

(9) "Permanent foundation" as it applies to a manufactured or mobile home (for taxation purposes) means concrete, concrete block or wood pier, any of which rests on embedded concrete or concrete block footings. Foundation for this purpose does not include mud sill, pier and post, wood blocks, concrete block, or other types of temporary support, any of which rests on the ground.

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

(11) "Running gear" as it applies to a manufactured or mobile home means axles, tires and wheels, and hitch.

(5) through (5)(b) remain the same but are renumbered (12) through (12)(b).

AUTH: 15-1-201, MCA
IMP: 15-1-101, 15-1-116, 15-1-118, 15-7-304, 15-7-306, 15-24-1501, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.106 to add definitions that will help to clarify terms being used in the amendments found in ARM 42.20.117.

42.20.117 CLASSIFICATION CHANGE FOR MANUFACTURED HOME OR MOBILE HOME (1) To change the status of the tax classification of a manufactured

home, as required by 15-1-116 and 15-1-118, MCA, an owner of a manufactured home may obtain a form titled "statement of intent to declare a manufactured home real property" or "statement of reversal of declaration" from the county clerk and recorder.

(2) The only time the department will require the owner of record of a manufactured home, or his agent, ~~must~~ to provide the department with a copy of either of the documents in (1)~~, which have been certified by the clerk and recorder,~~ is when they are formally requesting a ~~in order to~~ change in the tax status of a manufactured home from real to personal property or from personal to real property. The owner shall provide a copy of the final document which identifies that the process has been completed for surrendering the title or restoring the certificate of origin or certificate of title. For purposes of this section, the classification of the manufactured home as real property is dependent on it meeting the requirements of this section and (5).

(3) The owner of a mobile home, or his agent, may request a change in the tax status of a mobile home from real to personal property or from personal to real property, by completing a “Property Adjustment Form” (AB-26). The form must be returned to the local department office.

(4) If in the normal course of business, the department field staff identifies a manufactured home or mobile home that meets the requirements of (5), it will be classified as real property.

(5) Manufactured or mobile homes will be valued and classified as real property when the home meets all of the following guidelines:

(a) the running gear is removed; and

(b) the manufactured or mobile home is attached to a permanent foundation, which cannot feasibly be relocated. Two possible foundation types exist:

(i) a concrete, concrete block, or wood perimeter foundation setting on a concrete or concrete block footing;

(ii) concrete stringers with footings or concrete columns with attachment points and the manufactured or mobile home is anchored and permanently blocked and skirted; and

(c) it is placed on land that is owned or being purchased by the owner of the manufactured home or mobile home or, if the land is owned by another person, it is placed on the land with the permission of the landowner.

~~(3)~~(6) For tax purposes, ~~the~~ any classification change ~~becomes effective the~~ from personal property to real property made by the department that occurs after January ~~following notification of completion by the department of its review and approval~~ 1 will become effective for the succeeding tax year.

(7) For tax purposes, any classification change from real property to personal property made by the department that occurs after January 1 will take immediate effect for the current tax year.

AUTH: 15-1-201, MCA
IMP: 15-1-116, 15-1-118, MCA

REASONABLE NECESSITY: The department is proposing to amend this rule to clarify the requirements of the classification of a manufactured home as real or

personal property. It also clarifies the effective date of the classification.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 7701
Helena, Montana 59604-7701

and must be received no later than June 16, 2006.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State May 8, 2006

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 44.3.2203, 44.3.2303, and 44.3.2304 regarding absentee and mail ballot voting	) NOTICE OF PROPOSED) AMENDMENT)) NO PUBLIC HEARING) CONTEMPLATED

TO: All Concerned Persons

1. On June 17, 2006, the Secretary of State proposes to amend the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on June 9, 2006, to advise us of the nature of the accommodation that you need. Please contact Janice Frankino Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5375; FAX (406) 444-4196; or e-mail jdoggett@mt.gov.

3. The proposed amendments will be applied retroactively to the procedures for the June 6, 2006, primary.

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

44.3.2203 FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR (1) Consistent with 13-13-212, MCA, an elector may apply for an absentee ballot by using a standardized form provided by rule by the Secretary of State, or by making a written request which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211, MCA. ~~Consistent with 13-13-212, MCA, an elector may apply for an absentee ballot, using only a standardized form provided for in these rules, by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211, MCA.~~

(2) remains the same.

(3) Consistent with 13-13-213(1), MCA, and except as provided in 13-13-213~~(3)~~(4), MCA, all absentee ballot application forms must be addressed to the appropriate election official. The elector may mail the application directly to the election administrator or deliver the application in person to the election administrator. An agent designated pursuant to 13-1-116, MCA, or a third party, may collect the elector's application and forward it to the election administrator. ~~the~~

~~elector shall mail the application directly to the election administrator or deliver the application in person to the election administrator. With the exception of an immediate family member, as defined in 15-30-602, MCA, or a guardian, a third party may not collect applications for absentee ballots from electors and forward the applications to the election administrator.~~

(4) When applying for an absentee ballot under 13-13-212, MCA, or at any other time by written request of the elector, an elector may also request to be mailed an absentee ballot, as soon as the ballot becomes available, for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(5) The election administrator shall mail an address confirmation form, prescribed by the Secretary of State, at least 75 days before the election to each elector who has requested an absentee ballot for subsequent elections. The form shall, in bold print, indicate that the elector may update the elector's mailing address using the form. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(6) The confirmation form specified under (5) shall be returned to the election administrator within the time period specified for receipt of absentee ballot applications under 13-13-211, MCA.

(7) An elector who has been removed from the register of electors who have requested an absentee ballot for each subsequent election may subsequently request to be mailed an absentee ballot for each subsequent election.

AUTH: 13-13-212, MCA
IMP: 13-13-211, 13-13-212, 13-13-213, MCA

44.3.2303 ABSENTEE OR MAIL BALLOT ELECTOR IDENTIFICATION FORM (1) An election official or election worker shall enclose with the materials sent to each provisionally registered elector an absentee or mail ballot elector identification form defined under ARM 44.3.2302(1) and prescribed by the Secretary of State.

AUTH: 13-13-603, MCA
IMP: 13-13-201, 13-13-603, MCA

44.3.2304 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING – DETERMINING THE SUFFICIENCY OF IDENTIFICATION (1) After completion of the signature verification procedures in 13-13-241 or 13-19-309, MCA, as applicable, the election administrator shall determine prior to an election whether ~~an~~ a provisionally registered absentee or mail ballot elector has provided sufficient identification defined in ARM 44.3.2302(7) to allow a ballot to be counted:

(a) If the identification is insufficient, an election official or election worker shall follow procedures described in 13-13-241, MCA, and these rules to allow ~~an~~ a

provisionally registered absentee or mail ballot elector who failed to provide proper identifying information in the outer return envelope to verify eligibility to vote:

(i) through (b) remain the same.

(c) If the absentee or mail ballot elector identification form is verified through a voter verification system or ~~other~~ another form of identification provided in ARM 44.3.2302(7) is sufficient, an election official or election worker shall mark on the absentee or mail ballot outer return envelope that sufficient identification was provided by the elector.

(d) remains the same.

(e) A legally registered elector includes but is not limited to an elector who was properly registered prior to January 1, 2003.

AUTH: 13-13-603, MCA
IMP: 13-13-114, 13-13-201, 13-13-241, 13-19-309, MCA

5. The 2005 Legislature enacted SB 302 and SB 88 that modify the rules of the Secretary of State. These proposed rule amendments have been transmitted to the clerk and recorders and election administrators in the state. The staff of the Secretary of State has provided extensive and ongoing training through written and e-mail directives and modifications to the forms booklet and the Election Judge Handbook regarding legislative enactments. The Secretary of State intends to engage in comprehensive rulemaking after the primary election and after all of the election laws passed by the 2005 Legislature become effective on July 1, 2006. These proposed rule amendments are necessary to clarify the rules related to applications for permanent absentee ballots and the process for requesting absentee ballots, specify that identification is not necessary for legally registered absentee and mail ballot electors, and includes a definition of legally registered elector.

6. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to Janice Frankino Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, fax to the office at (406) 444-3976, or e-mail to jdoggett@mt.gov and must be received no later than 5:00 p.m. on June 15, 2006.

7. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Janice Frankino Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, fax to the office at (406) 444-3976, or e-mail to jdoggett@mt.gov. A written request for hearing must be received no later than 5:00 p.m. on June 15, 2006.

8. If the agency 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 appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision, or from an association

having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be five based on the number of clerk and recorders and election administrators in Montana.

9. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices, and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, Uniform Commercial Code, or a combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-3976, e-mailed to jabranscum@mt.gov, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Mark A. Simonich for
Brad Johnson
Secretary of State

/s/ Janice Frankino Doggett
Janice Frankino Doggett
Rule Reviewer
Secretary of State

Dated this 8th day of May 2006.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.5.313 and 4.5.315 relating to noxious weed seed free forage	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 6, 2006, the Montana Department of Agriculture published MAR Notice No. 4-14-158 relating to noxious weed seed free forage at page 812 of the 2006 Montana Administrative Register, Issue Number 7.

2. The agency has amended ARM 4.5.313 and 4.5.315 exactly as proposed.

3. The following comments were received and appear with the Department of Agriculture responses:

COMMENT 1: Seven comments were received opposing the field inspection fee increase. The concerns expressed are that small scale producers using the product for their own use have no means of passing on the cost incurred by the fees, the fee increase reduces the incentive for producing noxious weed seed free forage and may deter producers from future participation, and the fee increase is also viewed as too high and producers are not sure they can recover the increased cost.

RESPONSE 1: The department understands the concerns, however, the ability to certify a field for noxious weed seed free forage products permits the producer to charge a premium price for their products and recover the cost of the inspection fee. While we understand that some small producers certify for their own use, and do not have the ability to pass on the $1.00/acre increase, because of 80-7-905(7), MCA, the department has a responsibility to move the fee structure and program toward self-sufficiency.

COMMENT 2: Four comments were received in support of the fee increase.

RESPONSE 2: The department concurs.

DEPARTMENT OF AGRICULTURE

/s/ Nancy K. Peterson
Nancy K. Peterson, Director

/s/ Timothy J. Meloy
Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, May 8, 2006.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.670 and 17.30.1202 pertaining to nondegradation requirements for electrical conductivity (EC) and sodium adsorption ratio (SAR) and definitions for technology-based effluent limitations, and the adoption of new rules I through X pertaining to minimum technology-based controls and treatment requirements for the coal bed methane industry	NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On October 6, 2005, the Board of Environmental Review published MAR Notice No. 17-231 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1844, 2005 Montana Administrative Register, issue number 19. On November 23, 2005, the board published MAR Notice No. 17-236 regarding a notice of extension of comment period on the proposed amendment and adoption of the above-stated rules at page 2288, 2005 Montana Administrative Register, issue number 22.

2. The board has not adopted the proposed amendments to ARM 17.30.1202 and has not adopted proposed New Rules I through X. The board has amended ARM 17.30.670 as proposed, but with the following changes, new matter underlined, stricken matter interlined:

17.30.670 NUMERIC STANDARDS FOR ELECTRICAL CONDUCTIVITY (EC) AND SODIUM ADSORPTION RATIO (SAR) (1) through (6) remain as proposed.

~~(7) For purposes of determining compliance with the water quality standards and nonsignificance criteria for all parameters of concern in discharges of methane wastewater, the department shall determine compliance limits by using 7Q10 flows.~~

3. The following comments were received and appear with the board's responses:

NONDEGRADATION

COMMENT NO. 1: The board has the authority and the obligation to amend the unconstitutional provision of its previously enacted rule that exempts SAR and EC from nondegradation review.

RESPONSE: The board disagrees that the current rules exempt EC and SAR from nondegradation review. Under the current rules, discharges of EC and

SAR may not have a "measurable effect on existing or anticipated uses or cause measurable changes in aquatic life or ecological integrity." This means that, in addition to requiring compliance with the nondegradation criteria for all other parameters that are present in CBNG wastewater, the department will impose any additional restriction necessary to prevent a measurable change to existing or anticipated uses that may result from EC and SAR. While the commentor contends that the current rule is unconstitutional, the current rule does not exempt CBNG discharges from all review under Montana's nondegradation policy as did the rule at issue in MEIC v. DEQ. Consequently, the board does not agree that the current rule is constitutionally flawed. Nonetheless, the board is changing the current rules for EC and SAR as explained in the board's following responses.

COMMENT NO. 2: Adoption of the proposed "harmful" criteria for EC and SAR is arbitrary and capricious because there is no evidence that Montana's current rule is inadequate to protect existing uses. The current rule, which prohibits discharges if there is any "measurable change" to aquatic life or ecological integrity of the stream, properly focuses on protecting existing uses. The proposed rule would impose unrealistic, de facto standards that represent a fraction of the levels of EC and SAR that could impair existing uses.

RESPONSE: The purpose of the proposed nonsignificance criteria for EC and SAR is not to protect existing uses, but to prevent the degradation of "high quality" waters, i.e., waters with quality better than that required by water quality standards. And while the board agrees that there is no evidence to suggest that the existing uses are not being protected by the current rules, the board does not agree that the "high quality" waters in the Powder River Basin are being adequately protected from degradation under the current rules.

COMMENT NO. 3: Federal regulations implementing Section 303(c) of the CWA mandate that a state's water quality standards specify the designated uses of the water body and establish criteria that will protect those uses. The criteria adopted by the states are subject to EPA approval. Under 40 CFR 131.11, EPA must reject state-adopted criteria that are not based upon a "sound scientific rationale." By adopting numeric nonsignificance criteria for EC and SAR, the board is effectively adopting a numeric standard that will supersede the numeric standards adopted in 2003 without a "sound scientific rationale" for doing so. As such, the proposed rule violates federal regulations.

RESPONSE: The numeric standards adopted in 2003 for EC and SAR were based on "sound science" and were established for the purpose of protecting designated uses. In this rulemaking, the board is not changing or replacing those numeric standards with more stringent standards as stated by the commentor. Rather, the new rule will change only the manner in which the department determines whether a "significant" change in existing levels of EC and SAR would occur. If a change in EC and SAR is deemed significant under the proposed "harmful" category, then an applicant would need an authorization to degrade prior to discharging. Since the "harmful" category is being adopted as a means to determine significant changes in existing quality rather than as a standard to protect

uses, the proposed rule is not subject to EPA's regulations requiring "sound scientific rationale" for criteria adopted under Section 303(c) of the CWA.

COMMENT NO. 4: The board is required to establish criteria for nonsignificant changes in water quality in a manner that equates significance with harm pursuant to 75-5-301(5), MCA. Although the statute contemplates that the board supports its conclusion of "harm" with sound scientific analyses, the board has failed to demonstrate that the new criteria for EC and SAR is necessary to protect human health, a beneficial use, or the environment.

RESPONSE: As indicated in the Responses to Comment Nos. 2 and 3, the new "harmful" category for EC and SAR is not intended to protect beneficial uses, but to protect "high quality" waters from significant changes in existing quality. Although the statute requires the criteria be established in a manner that equates significance with the "potential for harm," the statute does not require evidence that the criteria are necessary to protect beneficial uses. The protection of uses is not the function of the nonsignificance criteria, but the function of the water quality standards.

COMMENT NO. 5: A series of communications between the department and EPA reveal the political motivation behind the new nonsignificance criteria for EC and SAR. Since the agencies concede that the upper Tongue River is not impaired, there is simply no reason to impose new restrictions for the upper Tongue River. Nonetheless, the new rule focuses exclusively on CBNG development at the border and does nothing to correct the impairment caused by the petitioner's irrigation practices in the lower Tongue River. The fact that the new criteria will not require the irrigators to correct the problem they created but will severely restrict CBNG development at the border demonstrates a political motivation to stop CBNG development in Wyoming.

RESPONSE: The motivation of other entities supporting the new criteria for EC and SAR cannot be imputed to the board. As explained earlier, the board is adopting the new criteria as a valid means of protecting the "high quality" waters of the Powder River Basin by classifying EC and SAR as "harmful." And although the practical effect of the rule will be to impose further restrictions on CBNG development in the upper Tongue River, the motivation for adopting the rule is prompted solely by the intent to protect water from degradation, not to punish CBNG developers in Wyoming, as suggested by the comment.

COMMENT NO. 6: The adoption of the proposed rules, particularly the designation of EC and SAR as "harmful," will put an end to the cooperative discussions between Wyoming and Montana regarding the Tongue, Powder, and Little Powder rivers. Rather than allow the two states to share the assimilative capacity of these important water bodies, the rules attempt to dictate how CBNG should be developed in Wyoming.

RESPONSE: Comment noted. The nondegradation rule change is adopted to protect "high quality" waters, not to dictate development in Wyoming.

COMMENT NO. 7: Federal regulations require EPA to ensure that state standards, which do not include the uses specified in Section 101 of the CWA, are based upon "appropriate technical and scientific data and analysis …." 40 CFR 131.5(a)(4). The uses specified in Section 101 of the CWA include "the propagation of fish, shellfish, and wildlife," as well as "recreation in and on the water." In instances such as this - where state standards go beyond the "fishable/swimmable" uses of the CWA to add even more protection for agricultural uses - EPA's regulations make clear that those standards must be based upon the appropriate technical and scientific data and analysis required under 40 CFR 131.5(a)(4). Since EPA's approval of Montana's narrative nonsignificance criteria for EC and SAR indicated that the current criteria exceed federal antidegradation requirements, EPA must require the proposed changes to EC and SAR be supported by sound science.

RESPONSE: The federal regulation requiring "appropriate technical and scientific data and analysis" for the adoption of state standards, which do not include the "fishable/swimmable" uses described in Section 101 of the CWA, applies only to standards adopted for the purpose of supporting the designated uses of a water body. Since the rule classifying EC and SAR as "harmful" is not a "standard" for the protection of beneficial uses, the rule is not subject to the requirement for "sound science" contained in 40 CFR 131.5(a)(4). Instead, EPA will review the rule for its consistency with federal regulations describing the requisite elements of a state's antidegradation policy and implementation procedures. See 40 CFR 131.12. The board believes that the rule classifying EC and SAR as "harmful" is consistent with EPA's rule requiring that the quality of "high quality" waters "be maintained and protected." 40 CFR 131.12(a)(2).

COMMENT NO. 8: Montana law requires that the board's criteria for EC and SAR link "significance" with the potential for harm. 75-5-301(5)(c)(1), MCA. There is no scientific evidence demonstrating that the current criteria are inadequate to protect against harm to public health and the environment. There is also no scientific evidence to support the board's primary rationale for adopting the new "harmful" criteria for EC and SAR, which is that: "Montana's nondegradation policy is necessary to protect the existing water quality of the Tongue River from degradation from methane discharges in Montana and Wyoming." Since there is no scientific evidence to suggest that CBNG discharges have had any effect on the quality of the Tongue River since development began in 1999, there is no scientific basis for claiming that Montana's nondegradation policy is necessary to protect the existing quality of the Tongue River.

RESPONSE: As explained earlier, the new nonsignificance criteria for EC and SAR are not intended to protect designated uses from harm, but to protect the existing quality of "high quality" waters pursuant to Montana's nondegradation policy. As such, scientific evidence demonstrating that the current criteria are inadequate is not necessary to support the board's adoption of more stringent nonsignificance criteria. Finally, since CBNG development in Wyoming has the potential to degrade the quality of the Tongue and Powder rivers, the board's rationale for amending the criteria for EC and SAR to impose further limits on degradation is a legitimate reason for adopting the amendment.

COMMENT NO. 9: Several commentors argued in support of categorizing EC and SAR as "harmful" for purposes of nondegradation. Others submitted information and data to support argument that current EC and SAR standards are overly protective and opposed categorizing EC and SAR as "harmful."

RESPONSE: The board finds that EC and SAR should be categorized as "harmful" for the purpose of implementing Montana's nondegradation policy. The board notes that the intent of Montana's nondegradation policy is to protect the increment of "high quality" water that exists between ambient water quality and the numeric water quality standards. The board also notes that it has the responsibility to adopt rules protecting "high quality" water where it exists, including the Tongue River and Rosebud Creek in the Powder River Basin. Given that numeric standards have been adopted for EC and SAR, the board is uncomfortable with the inconsistency of the current "narrative" classification of EC and SAR, which is used solely for parameters for which no numeric standards have been adopted. Since all other parameters with numeric water quality standards are classified as either carcinogenic, toxic, or harmful, the board believes that EC and SAR should be treated in a similar manner.

COMMENT NO. 10: The adoption of changes to ARM 17.36.670 for EC and SAR to be defined as harmful parameters is redundant undue regulation since there are numeric standards.

RESPONSE: The numeric water quality standards and the nondegradation policy are separate, yet complementary components of the state's water quality standards program. Each component of the program serves an independent and important function. The function of a numeric standard is to quantify the level determined to be protective of designated uses for a given pollutant whereas the purpose of a nondegradation policy is to protect "high quality" water. Since the nondegradation policy is the component that serves the purpose of protecting "high quality" water, designating how any pollutant, including EC and SAR, is categorized for purposes of determining significant changes in those waters is not redundant of the standards that protect beneficial uses. Consequently, the board believes that the nondegradation criteria being adopted for EC and SAR are necessary and do not constitute "undue regulation."

COMMENT NO. 11: The classification of EC and SAR should not be changed from narrative to harmful. SAR and EC are simply measures of water ionic properties and TDS, and all natural waters contain ions and TDS. Some levels of TDS are beneficial to both human health and ecologic health. Neither SAR nor EC is harmful under all or even most situations. While high levels of EC and SAR can have negative impacts on plants and animals, levels that are too low can also have negative impacts. The magnitude and interdependence of the EC and SAR values, in relation to the threshold between low risk and high risk, is key to determining whether the resulting quality of water is harmful or not. Therefore, from a technical standpoint, although EC and SAR provide an understanding of overall water quality, those parameters are not necessarily harmful.

RESPONSE: The fact that some substances are harmless or even beneficial in common concentrations in water is irrelevant. There are many substances for

which water quality standards are necessary to protect beneficial uses such as dissolved oxygen, pH, EC, and SAR, which are harmless or beneficial in many circumstances. However, the science and evidence presented to the board to support the 2003 adoption of EC and SAR standards clearly demonstrated that EC and SAR levels could reach levels that are detrimental to soils and sensitive crops in the Powder River Basin. Thus, the board adopted standards necessary to protect the most sensitive beneficial uses, i.e., irrigated agriculture, from adverse impact due to excessive quantities of EC and SAR in 2003. Since the board adopted numeric standards for these substances, the board also believes it is necessary to determine the appropriate nondegradation category for those parameters to protect "high quality" waters. The board believes that "harmful" is the appropriate nondegradation category for EC and SAR as explained more fully in Response to Comment No. 9.

COMMENT NO. 12: The change in the nondegradation rules would apply to all discharges into the Tongue River, even those that are not CBNG discharges. Thus, all dischargers would be required to obtain an authorization to degrade.

RESPONSE: An authorization to degrade would be necessary only for new or increased discharges to surface water that would exceed the new significance criteria for EC and SAR. Since the "harmful" designation will establish more stringent nondegradation criteria for EC and SAR than the existing rule, it is more likely that any proposal for a new or increased discharge containing EC and SAR in levels above ambient concentrations must obtain an authorization to degrade. The board also notes that this change in the nondegradation criteria is only for EC and SAR, and does not change the nondegradation criteria for any other substance.

COMMENT NO. 13: Changes in the nondegradation criteria would encourage industry to discharge CBNG water to the rivers in the spring, when high quality irrigation water is most needed for salinity management. Thus, water will be impaired in the rivers most of the year.

RESPONSE: The board is adopting the new nonsignificance criteria for EC and SAR in order to protect "high quality" waters (i.e., water that is cleaner than the water quality standards) throughout the year. The board therefore assumes that the department, when imposing the new criteria in discharge permits, will measure "significance" based on actual ambient stream conditions throughout the year. By doing this, the "high quality" waters present during springtime runoff will be protected from changes in water quality that exceed the new criteria.

COMMENT NO. 14: The standard for SAR is more restrictive than is necessary to protect irrigation based on generally accepted scientific literature.

RESPONSE: Since the board is not proposing changes to the water quality standard for SAR, the science supporting the adoption of that standard is outside the scope of this rulemaking. In order to address any perceived inaccuracies in the science supporting the current rule, a new rulemaking would be necessary because the present one does not propose any change to the numeric water quality standards.

The board will take this opportunity to explain, however, that during the hearings leading to the adoption of the EC and SAR standards, the board heard

testimony and expert opinions based on the current literature. Using this information, the board made its decision based upon the principle of "risk management." That is, the board minimized risk to the irrigator's use of water by adopting the more conservative standards within a range of possible choices.

COMMENT NO. 15: Treatment of SAR as "harmful" for the purpose of applying the nondegradation policy would create an extremely complex regulatory process to determine the net effect of CBNG discharged water and effluent from other dischargers on the SAR of the receiving water. The reason for this complexity is that SAR is not a water quality constituent per se, but is a ratio of sodium over the square root of calcium plus magnesium divided by two (concentration in milliequivalents). The indeterminate effect of mixing two waters whose SAR values differ makes the nondegradation rule especially complex because the individual ion concentrations of each water source must be considered, and in some cases, geochemical modeling may be required.

RESPONSE: The board has adopted MPDES permit rules that address multiple dischargers to a stream and assumes that the department will adhere to those rules when issuing permits for discharges of CBNG water and other discharges. The board is also aware that the department has developed and issued MPDES permits that contain limits for SAR to ensure compliance with the existing numeric water quality standard for that parameter. While the board acknowledges that developing permit limits and conducting the supporting analysis is more complex for SAR than some other constituents, the analysis is within the normal range of analysis used by the department for other permits.

COMMENT NO. 16: Changing the nonsignificance criteria for EC and SAR to "harmful" is inconsistent with the approach the board took in 2003.

RESPONSE: The board acknowledges that, in 2003, it determined that EC and SAR should be treated as "narrative" for purposes of determining nonsignificant changes in water quality. Much of the board's reasons for making this determination were premised on the difficulty encountered by the permit-writer in measuring nonsignificant changes during the permit application process. This perceived difficulty in measuring changes was based on the naturally high variability of EC and SAR in the Powder River Basin. The board has reconsidered its earlier finding and has now determined that it is inappropriate to treat EC and SAR differently than other numeric water quality standards based upon regulatory inconvenience for the department.

Moreover, when the board adopted the "narrative" criteria in 2003, some board members voiced concern with this approach. The concern stemmed from a recognition that some waters in the Powder River Basin, such as the Tongue River, were in fact "high quality" waters that required protection under the nondegradation policy. After further discussion, the board passed a two-part motion: the first part moved to adopt the narrative criteria that is now in rule; the second part "direct(ed) the department (to) initiate rulemaking on a different method …." The board believes that the evidence and argument submitted in the current rulemaking supports treating EC and SAR as "harmful" parameters for purposes of nondegradation review.

COMMENT NO. 17: Several commentors suggested that changing the nonsignificance criteria for EC and SAR could unintentionally limit agricultural practices. Since irrigation practices, such as flood irrigation or return flows, may add sodium that would exceed the new criteria, those irrigation techniques could be prohibited or limited.

RESPONSE: In general, the nondegradation policy is applied to all activities that require the department's review and approval, such as point-sources under MPDES permits or waste treatment systems in new subdivisions. Nonpoint source activities, such as agricultural activities, are categorically exempt from the nondegradation policy, provided those activities apply reasonable land, soil, and conservation practices and all beneficial uses are protected. 75-5-317(2)(b), MCA. Due to this categorical exemption, the board does not anticipate that irrigation practices will be required to meet the new criteria as long as those practices protect beneficial uses.

COMMENT NO. 18: Changing the classification of EC and SAR to "harmful" will severely restrict the department's ability to issue water discharge permits based on the assimilative capacity of the receiving waters.

RESPONSE: The board acknowledges that ambient levels of EC and SAR in the Powder River Basin are naturally near or above the "harmful" criteria that requires existing water quality levels to be less than 40% of the standard in order for any change in water quality to be deemed "nonsignificant." This means that changing the status of EC and SAR to "harmful" will most likely require new permittees, who otherwise could discharge to levels allowed by the numeric standards, to apply for an authorization to degrade. Alternatively, those wishing to discharge without obtaining an authorization to degrade must discharge levels of EC and SAR below or at ambient water quality.

COMMENT NO. 19: Any further restrictions on water quality at the border are unnecessary and place an unfair burden on Wyoming to offset water degradation issues that may exist further downstream due to contributions from other sources, including irrigation practices near Miles City.

RESPONSE: The board is adopting the new nonsignificance criteria for EC and SAR in order to protect Montana's "high quality" waters in the Powder River Basin, not to specifically burden discharges originating in Wyoming. In terms of the 12 mile stretch of impaired waters near Miles City, the department will continue to address that issue through its own permitting procedures, nonpoint source program, and TMDL program.

COMMENT NO. 20: The fisheries and aquatic life of the Tongue River cannot withstand EC levels of 1500. Any increase in the levels of EC and SAR can result in significant and measurable changes in the ecological integrity of a water body.

RESPONSE: Since the board is not proposing changes to the water quality standard for EC and SAR, the science supporting the adoption of those standards is outside the scope of this rulemaking. In order to address any perceived

inaccuracies in the science supporting the current rule, a new rulemaking would be necessary because the present one does not propose any change to the numeric water quality standards.

The board notes that the standards adopted for EC and SAR in 2003 were established to protect the most sensitive beneficial use of the waters, which is its use for irrigation. Since the standards are established to protect the most sensitive beneficial use, the board assumes that all other beneficial uses, including aquatic life, are more than adequately protected. The board is unaware of any new information to support a change in the existing standards. The board is aware that there are studies underway in the Tongue River Basin to ensure that the existing standards are adequately protective.

COMMENT NO. 21: The quality of the produced water in the Little Powder River area is better than in the other drainages and it is more likely that water quality and suitability for irrigation has been improved as a result of CBNG discharges.

RESPONSE: The board is not aware of data that supports that water quality in the Little Powder River is better than in the other drainages due to CBNG discharges. Data that is available, however, indicates that water quality in the Little Powder River drainage has not changed in response to CBNG produced water.

COMMENT NO. 22: Numerous commentors indicate that the rules being considered by the board should not be adopted until the water quality effects from CBNG development under the existing rules are proven to be inadequate. Many commentors noted that there is no evidence that CBNG development in Wyoming has had any effect on the quality of water in the Tongue River and therefore the rules are premature. Others noted that the Water Pollution Control Advisory Council adopted a motion advising the board not to go forward with the proposed rules for the same reasons stated above.

RESPONSE: The board agrees in part with the commentors by its decision not to adopt the new rules mandating reinjection and treatment of all CBNG water. The board does not agree, however, that it should not adopt the proposed change that will designate EC and SAR "harmful" for purposes of nonsignificance review. The board has explained previously that the change to "harmful" is consistent with the manner in which the board has addressed all other parameters for which the board has adopted numeric water quality standards.

COMMENT NO. 23: Given the ambient presence of EC and SAR in the Powder River, the Powder River does not qualify as a "high quality" water appropriate for a stringent nondegradation review.

RESPONSE: The existing water quality in the Powder River does exceed the numeric standards for EC and SAR much of the time; the commentor is correct in stating that for EC and SAR the Powder River is not a "high quality" water that is protected under Montana's nondegradation policy.

COMMENT NO. 24: The proposed rules violate 75-5-203, MCA, which prohibits the board from adopting a rule more stringent than comparable federal regulations or guidelines, unless certain written findings are made. The rules are

more stringent than federal regulations because EPA has not promulgated numeric criteria for EC and SAR. Since the board has not made the findings required by 75-5-203, MCA, for the more-stringent rules being considered, the board cannot adopt the proposed rules.

RESPONSE: The board does not agree that the proposed rules are more stringent than comparable federal regulations. The board is not adopting numeric water quality standards for EC and SAR, but rather adopting a rule that will classify those parameters as "harmful." As a result, EC and SAR will now be reviewed under the state's nonsignificance criteria applicable to all harmful parameters. Since there are no comparable federal regulations regarding the use of nonsignificance criteria to implement a state's nondegradation policy, the prohibitions in 75-5-203, MCA, do not apply to the board's adoption of the rule classifying EC and SAR as harmful.

COMMENT NO. 25: Section 1342(b) of the CWA does not authorize EPA to automatically apply Montana's proposed water quality standards in Wyoming. Therefore, the board should not assume EPA will do so. Although EPA has promulgated regulations requiring the imposition of a downstream state's water quality standards in all CWA permits issued by a state or EPA, there is a serious question as to whether EPA has authority to require state permit writers to comply with those regulations. See, 40 CFR 122.4(d) and 122.44(d). The U.S. Supreme Court has upheld EPA's authority to adopt rules requiring EPA-issued permits to comply with the standards of a downstream state under Section 401 of the CWA, but it has not ruled on the validity of the rules as applied to state-issued permits. See, Arkansas v. Oklahoma, 503 U.S. 91, 106 (1992). Since the U.S. Supreme Court has made clear that a downstream state takes a "subordinate position" to the upstream permitting state under the CWA, the validity of the rule as applied to state permits is questionable. Int'l Paper Co. v. Ouellette, 479 U.S. 481, 490-491(1987).

RESPONSE: The board understands that it cannot assume that EPA will "automatically" impose Montana's revised nondegradation criteria in Wyoming permits. However, the board does not agree that EPA's regulations requiring compliance with a downstream state's water quality standards are not applicable to permits issued by Wyoming. Contrary to the commentor's assertion, the Court's reasons for upholding the regulations were not limited to federal permits under Section 401, but rather on the purposes of the Act in Section 101 and the water quality-based effluent requirements in Section 301(b)(1)(c). Together, those provisions expressly identify the achievement of state water quality standards in a system of nationwide NPDES permits as one of the Act's central objectives. Arkansas, supra, at 105-106. The court further explained that, although a downstream state's direct participation in the permitting process of an upstream state is limited, those limits "… do not in any way constrain the EPA's authority to require … compl[iance] with downstream water quality standards." Id. at 106. For the reasons given above, the board is confident that EPA's regulation is valid and that EPA will adhere to its own regulations for purposes of imposing Montana's revised nondegradation standards in Wyoming permits.

COMMENT NO. 26: A rule that requires EPA to automatically apply Montana's standards to Wyoming is also contrary to the policy of Section 101(b) of

the CWA to "… recognize and preserve, and protect the primary responsibilities of the States to prevent, reduce and eliminate pollution, [and] to plan the development and use … of land and water resources …." 33 U.S.C. 1251(a). The rule is also contrary to Section 510 of the CWA, which allows states to adopt more stringent standards within their borders, but does not authorize states to enforce those more stringent standards on upstream states. Given the intrusiveness of the application of one state's water quality standards to another state's issuance of a permit, a court would give little deference to EPA's claim of authority to impose Montana's standards in Wyoming.

RESPONSE: The board does not agree. Provisions in the CWA that preserve a state's authority over its waters and lands such as Section 101(b) and Section 510 of the Act "… only concern state authority and do not constrain the EPA's authority to promulgate reasonable regulations requiring point sources in one state to comply with water quality standards in downstream States." Arkansas, supra, at 107. Given the U.S. Supreme Court's pronouncement in Arkansas rejecting the argument that Section 510 precluded compliance with an adjacent state's standards, a court will likely uphold EPA's regulation as a valid exercise of its authority.

COMMENT NO. 27: The proposed rule changing the nonsignificance criteria of EC and SAR to "harmful" violates the "negative" aspect of the commerce clause, which directly limits the power of states to discriminate against interstate commerce. Wyoming v. Oklahoma, 502 U.S. 437, 454 (1992). According to the U.S. Supreme Court, "This 'negative' aspect of the Commerce Clause prohibits economic protectionism - that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." New Energy Co. of Indiana v. Limbach, 486 U.S. 269, 273 (1988). If Wyoming is prohibited under the rule from renewing or issuing new discharge permits in the Tongue, Powder, and Little Powder River watersheds, CBNG production in Wyoming will be curtailed and the impact on interstate commerce will be severe. The proposed rule discriminates against out-of-state developers since Wyoming discharges cannot obtain the relief available to discharges in Montana, i.e., obtaining an authorization to degrade. Due to its discriminatory purpose and effect, the proposed rule violates the commerce clause of the federal constitution.

Moreover, any suggestion that Section 510 of the CWA allows Montana to discriminate against the Wyoming CBNG industry would be unavailing. Although Congress can insulate a state's regulations from the "negative" aspect of the Commerce Clause, Congress must make its intent to do so "manifest" and "unambiguous." Wyoming, supra. Since Section 510 merely saves state standards from preemption, Congress has not manifested its intent to protect Montana's standards from strict scrutiny under the Commerce Clause.

RESPONSE: Neither the Montana statutes nor rules prohibit the application for or issuance of an authorization to degrade to a Wyoming discharger. Furthermore, even if it is assumed that a Wyoming discharger could not obtain an authorization to degrade, the board does not agree that the proposed nonsignificance criteria for EC and SAR is subject to the "negative" aspect of the Commerce Clause, because the CWA provides federal status to state standards in

the context of interstate disputes. Arkansas v. Oklahoma, 503 U.S. 91, 111 (1991). 40 CFR 131.12 requires states to adopt antidegradation policies. The federal character of state water quality standards is based upon the state and federal "partnership" created by the CWA, which promotes the "common goal" of cleaning up the nation's waters. See e.g., New York v. United States, 505 U.S. 144, 167 (1992). As explained in New York, the CWA is an instance where Congress, acting under its authority to regulate activities affecting interstate commerce, has offered the states the choice of regulating those same activities using federal standards in a spirit of "cooperative federalism." Id. By accepting Congress' offer to regulate activities under the CWA, states agree to issue discharge permits according to federal requirements and to adopt and enforce water quality standards that are subject to EPA's approval.

In the context of interstate pollution, the U.S. Supreme Court has found that EPA's determination of which state standards are "applicable" in another state's permit to be a matter of federal law. Arkansas, 503 U.S. at 111. The court reached its conclusion based upon two findings. First, the fact that interstate pollution had long been controlled by federal common law led the court to conclude that EPA's regulation, requiring all NPDES permits to comply with "applicable water quality requirements of all affected states" to have effectively incorporated into federal law any state standard that EPA determined to be applicable to an upstream state. Id. As explained by the court - "Recognizing that the system of federally approved state standards as applied in the interstate context constitutes federal law is wholly consistent with this principle (i.e., the long history of federal control over interstate pollution)." Id. Second, the court found that "treating state standards in interstate controversies as federal law accords with the Act's purpose of authorizing the EPA to create and manage a uniform system of interstate water pollution regulation." Id.

Applying those principles here, the board believes that the nonsignificance criteria for EC and SAR, if approved and determined by EPA to be "applicable" to Wyoming, will become a matter of federal law governing interstate commerce. As such, the board's adoption of the rule does not violate the "negative" aspect of the commerce clause.

REINJECTION

COMMENT NO. 28: The proposed rule requiring reinjection invades the authority of the Board of Oil and Gas Conservation (BOGC) because 82-11-111(2)(a), MCA, grants that agency the authority to regulate "the disposal or injection of water" from oil and gas activities.

RESPONSE: The statute cited above does not vest the BOGC with exclusive authority to regulate reinjection, but rather requires the BOGC to impose "measures" that will prevent damage to the land or subsurface caused by oil and gas development, including measures that regulate the "injection of water and disposal of oil field wastes." The board does not believe that any authority it has under 75-5-305, MCA, to require reinjection as treatment for the disposal of CBNG wastewater intrudes upon the BOGC's authority to require the same.

COMMENT NO. 29: The Department of Natural Resources and Conservation (DNRC), not the board, has been delegated the authority to regulate water quantity. Since the purpose of reinjection is to conserve water in the aquifers and to protect wells and springs from aquifer depletion, the board has no authority to adopt a rule imposing reinjection for the purpose of regulating water quantity.

RESPONSE: Under Montana's Water Quality Act (WQA), the board is authorized to adopt rules for the treatment of waste in order to protect water quality, not water quantity. Since the Legislature has expressly granted to DNRC the authority and responsibility to protect ground water from excessive withdrawals and to prevent the "waste" of ground water pursuant to 85-2-506 through 85-2-507, MCA, the board agrees that it has not been granted the same authority under the WQA. Consequently, the board has no authority to adopt a rule requiring reinjection if the sole purpose of the rule is to conserve water quantity. Since the board is declining to adopt the reinjection rule, its authority to do so is a moot issue. See Responses to Comment Nos. 38 and 39.

COMMENT NO. 30: The board has no authority to impose reinjection as a means to protect water rights from harm caused by CBNG development when a statute administered by BOGC addresses the same issue. Specifically, under 82-11-175(3), MCA, a developer must offer a "mitigation agreement" to any person whose water right may be affected by CBNG development. Since the BOGC has been delegated authority to administer the statute, the board has no authority to adopt a rule that interferes with or conflicts with the BOGC's authority.

RESPONSE: The board's authority to impose reinjection as a treatment requirement for CBNG wastewater is independent from the BOGC's authority to require mitigation agreements for water rights that may be affected by CBNG development. Therefore, the board is not prohibited from requiring reinjection under the theory that it interferes with BOGC's authority. Since the board has determined not to adopt the requirement for reinjection, the issue of the board's authority to do so is moot. See Responses to Comment Nos. 38 and 39.

COMMENT NO. 31: The requirement to reinject conflicts with 75-5-305, MCA, which has been cited as authority for the board to adopt the requirement. Reinjection, however, is not a "treatment of wastes," as contemplated by the statute, but is instead a "waste" of good water itself. Since reinjection precludes the waters' use for stock watering, managed irrigation, dust suppression, and other beneficial uses, the requirement to reinject must be considered a "waste" of good water.

RESPONSE: Although the short-term effect of reinjection would preclude the use of CBNG water for beneficial uses, the theory behind the rules is that the reinjected water will be conserved for future acquisition and use. As such, the requirement to reinject does not result in a "waste" of good water. Moreover, the U.S. Environmental Protection Agency (EPA) has recognized the wide use of reinjection by coastal oil and gas developers to justify a "zero discharge" limit upon those facilities even though EPA did not mandate reinjection as the sole method of treatment. Texas Oil & Gas Ass'n v. EPA, 161 F.3d 923, 931 (5th Cir. 1998). Accordingly, the board, like EPA, considers reinjection to be a valid method of treatment for water produced during oil and gas development.

COMMENT NO. 32: The proposed rules requiring reinjection conflict with the legislative mandate in 82-11-175(2), MCA, which expressly states that water produced from CBNG wells must be managed in any of the following ways: (1) used for beneficial purposes; (2) reinjected; (3) discharged to surface waters under an MPDES permit; or (4) managed through "other methods allowed by law." Since the plain language of the statute allows CBNG water to be managed in any of the four ways described above, a rule that limits those options is beyond the board's authority for two reasons: (1) a rule cannot enlarge, modify or contravene the provisions of statute; and (2) an agency cannot adopt a rule apart from that power which has been granted to it by the legislature.

RESPONSE: The authority of the BOGC to administer the requirements in 82-11-175(2), MCA, is independent of the board's authority to adopt treatment requirements under the WQA. Since the board's authority to adopt treatment requirements is based upon 75-5-305, MCA, and not upon 82-11-175, MCA, the argument that the board would exceed its authority and promulgate a rule contrary to its authorizing statute has no merit.

COMMENT NO. 33: The proposed rules violate 75-5-203, MCA, which prohibits the board from adopting a rule more stringent than comparable federal regulations or guidelines, unless certain written findings are made. The rules are more stringent than federal regulations because EPA's effluent limitation guidelines (ELG) for oil and gas facilities allow produced water to be used for beneficial purposes. Since the board has not made the findings required by 75-5-203, MCA, for the more-stringent rules being considered, the board cannot adopt the proposed rules.

RESPONSE: The board does not agree that the proposed rules are more stringent than comparable federal regulations. The ELG adopted by EPA for oil and gas development west of the 98th meridian, which requires produced water be put to a beneficial use (40 CFR 435.50), does not apply to CBNG facilities. See EPA draft interagency report, at pages 1-3, 1-4, entitled "Guidance for Developing Technology-based Limits for Coal bed Methane Operations: Economic Analysis of the Powder River Basin." Since EPA has not adopted a regulation specifying treatment technologies for CBNG facilities, there is no comparable federal regulation or guideline that would trigger the prohibition in 75-5-203, MCA, regarding the adoption of rules requiring reinjection or treatment of CBNG wastewater.

COMMENT NO. 34: The rule prescribing reinjection as the only method of treatment exceeds the board’s authority to adopt treatment requirements in the event EPA has failed to do so. See, 75-5-305, MCA. Under the CWA, EPA may not mandate a particular treatment for purposes of meeting the effluent limitations adopted by the agency.

RESPONSE: The board agrees that the CWA prohibits EPA from specifying a particular method of treatment when it promulgates technology-based effluent limitations. See e.g., Riverkeeper Inc. v. EPA, 358 F.3d 174, 185 (2nd Cir. 2004). According to Riverkeeper, rather than prescribe a specific method of treatment, EPA "… must promulgate precise effluent limitations … for example, 40 milligrams of

suspended solids per liter, or 30,000 parts per million of toxic pollutants" and leave the preferred method of meeting the limitations to the discretion of each facility. Id. at 185, 188. Since the board is declining to adopt the rules requiring reinjection, the question of the board's authority to mandate a particular treatment under the WQA is a moot issue. See Responses to Comment Nos. 38 and 39.

COMMENT NO. 35: The board should use the factors given by the U.S. Supreme Court in Daubert v. Merrell Dow Pharmaceutical, Inc., 509 U.S. 579 (1993), which the Montana Supreme Court has adopted in State v. Moore (1994), 268 Mont. 20, for purposes of evaluating scientific and technical opinions given in support of the proposal for reinjection. The factors in Daubert, as applied to the expert testimony offered by the petitioners, argue strongly that the testimony and report of James Kuipers should not be given significant weight by the board.

RESPONSE: In an administrative rulemaking under the Montana Administrative Procedure Act, the rules of civil procedure, and rules of evidence used by courts do not apply. For this reason, the board declines to use the factors given in Daubert as a means to weigh evidence or the credibility of a witness during this rulemaking proceeding. Since the board has determined that it will not adopt the reinjection requirement, the credibility of the testimony given in support of the rule is a moot question. See Responses to Comment Nos. 38 and 39.

COMMENT NO. 36: The proposed rules violate the federal regulation requiring states to follow established legal procedures when adopting or revising water quality standards. 40 CFR 131.5(a)(3). Since the legislature has established a variety of permissible ways to manage CBNG produced water pursuant to 82-11-175, MCA, the rule restricting the options to only one way, i.e., reinjection, conflicts with the legislative mandate in 82-11-175, MCA, and is therefore an invalid exercise of the board's authority. Accordingly, EPA cannot reasonably conclude that the board followed state legal procedures when adopting the rule, which is a prerequisite for EPA approval.

RESPONSE: As explained in Response to Comment No. 32, the authority of the board to adopt treatment requirements for the disposal of wastes under 75-5-305, MCA, is independent of the authority of the BOGC to administer the requirements of 82-11-175(2), MCA. Since the board proposed the requirement to reinject pursuant to 75-5-305, MCA, the rule does not conflict with the board's statutory authority to adopt treatment requirements for the disposal of wastes. Accordingly, the rule was proposed for adoption according to state law and legal procedures.

COMMENT NO. 37: Section 75-5-305, MCA, requires that, before the board may establish minimum technology-based treatment requirements, the board must ensure that the requirements are "cost effective and economically, environmentally, and technologically feasible." This provision requires that the board produce sound scientific data to support its determinations that a proposed rule is either environmentally necessary or technologically feasible.

RESPONSE: The board agrees that, prior to adopting a rule imposing minimum treatment requirements, the board must produce scientific data

demonstrating the economic, environmental, and technological feasibility of the treatment requirements. The board does not agree, however, that the statute also requires data demonstrating that the rule is necessary to protect the environment. Since the board has determined that it will not adopt the rules requiring reinjection or treatment, the scientific data required by 75-5-305, MCA, in support of those rules is not necessary.

COMMENT NO. 38: The board has ample authority under Montana's Water Quality Act and the federal CWA to adopt technology-based treatment requirements for the CBNG industry. The board's authority to adopt minimum treatment requirements under 75-5-305(1), MCA, mimics the Clean Water Act's provisions for technology-based treatment requirements and specifically authorizes the board to adopt such requirements when the federal government fails to do so. Since EPA has failed to adopt technology-based standards for the CBNG industry, the board should fill the gap for EPA and adopt the proposed treatment requirements. These requirements are consistent with EPA's rules for establishing best available technology (BAT). By adopting the rules, the board will promote the goal of the CWA, which is to achieve "zero discharge."

Other commentors opposing the rules contend that the technological feasibility of reinjection for CBNG producers in Montana has not been demonstrated as required by the CWA.

RESPONSE: The board agrees with the proponents that it has authority to adopt technology-based treatment requirements in the absence of federally promulgated requirements. The board also acknowledges that its authority to adopt minimum treatment requirements for an industry under 75-5-305, MCA, is closely tied to EPA's procedures for adopting technology-based effluent limits. Similar to EPA, the board must ensure that the requirements are "cost effective and economically, environmentally, and technologically feasible" for a particular industry.

The board also agrees, however, with the opponents' comments stating that the requirement to reinject is contrary to the CWA. Cases construing the CWA have found that the effluent limitations envisioned by Congress were intended to maximize equity among discharges by establishing uniform standards for each industry. E.I. du Pont de Nemours v. Train, 430 U.S. 112, 129 (1977). In order to promote the goal of uniformity, the technology-based standards promulgated by EPA are to focus on the industry as a whole and are not to be applied on a case-by-case basis. See e.g., Natural Res. Def. Council v. EPA, 859 F.2d 156, 200 (D.C. Cir. 1988) (the effluent limits would "assure that similar point sources with similar characteristics ... meet similar effluent limits."); United States Steel Corp. v. Train, 556 F.2d 822, 844 (7th Cir. 1977) (technology-based effluent limitations and guidelines establish "uniform standards and are not to vary from plant to plant."). Consequently, once EPA promulgates technology-based effluent limits for an industry, permit writers may not impose different treatment standards on a case-by-case basis. Nat. Res. Def. Council, supra, at 200.

Rather than demonstrate that reinjection is feasible for the CBNG industry in Montana, petitioners have conceded that reinjection will not be feasible in some, perhaps many, instances. The rules reflect this concession. Although New Rule I unequivocally requires reinjection of all CBM wastewater, the requirement is

prefaced with an exemption that equally applies to all CBM wastewater whenever site-specific evidence demonstrates that the requirement is not feasible. Since the rules do not establish reinjection as a "uniform" standard for the entire CBNG industry in Montana, the rules conflict with the CWA's goal of uniformity and are not supported by the board's authority to adopt treatment requirements for a particular industry pursuant to 75-5-305, MCA. Therefore, the board has determined that it will not adopt the new rules requiring reinjection of CBM wastewater.

COMMENT NO. 39: Several comments were received stating that the requirement to achieve "zero discharge" through reinjection is both impossible and unreasonable. Comments from Wyoming clarified that, despite various attempts, only three percent of produced CBNG water in Wyoming has been successfully reinjected. Others provided detailed reports explaining why each injection site is geologically specific and further explaining that reinjection sites in the Montana Powder River Basin are very limited. These reports indicated that the sites that are available for reinjection in Montana may not be viable due to a number of factors. A primary concern is that the lateral discontinuity of the Fort Union sands makes it difficult to predict or map potential reinjection sites. Moreover, much of the sands in that formation are typically saturated thereby severely limiting the amount of available pore space to store reinjected water. In some cases, injecting produced water into the coal seams from which it is taken will reverse the pressure reduction that allows the gas to move, thereby reducing or halting the production of CBNG. Further, if a site for injection is found, its serviceable life depends upon its geologic properties and hydrologic conditions, including the amount of water already present and the likelihood of fracturing under the pressures used to reinject. These commentors concluded that, due to the studies indicating that reinjection is not technically feasible or reasonable in most instances, the board has not met the requirement to prove technological feasibility for requiring this technology in all cases, pursuant to 75-5-305, MCA.

RESPONSE: The board agrees that the technical feasibility of reinjection has not been proven as a treatment requirement for the entire CBNG industry in Montana. For this reason, the board has determined that it will not adopt the treatment requirement of "zero discharge."

COMMENT NO. 40: Proving that reinjection is not technically feasible with "clear and convincing evidence" is a standard too high to prove. There is so much uncertainty in the geological and hydrological systems in the Powder River Basin in Montana that the data to prove the standard may be unobtainable for many sites and prohibitively expensive for other sites.

RESPONSE: Since the board has determined that it will not adopt reinjection as a treatment requirement, it follows that the board is also not adopting the waiver provision requiring "clear and convincing evidence."

COMMENT NO. 41: Several commentors raised concerns over the environmental impacts that will result from the rule requiring mandatory reinjection for all CBNG produced water in the region. In many cases, in order to accommodate the amount of produced water from a single CBNG well, a producer may need to drill

two or more reinjection wells to achieve the required "zero discharge." Consequently, mandatory reinjection will result in more than doubling the number of wells drilled in the Powder River basin. In addition, the number of roads, drill pads, pipe installations, and other disturbances will necessarily increase to accommodate reinjection. These surface impacts have not been considered by the board.

In terms of subsurface impacts, reinjection will cause impacts to aquifers if undesirable mixing of aquifers occurs or if there is subsurface fracturing caused by pressures used to reinject. These subsurface impacts are difficult to predict or measure and have not been considered by the board.

Finally, the suggestion that sequential completion of wells should be used is problematic from both a practical and an environmental perspective. First, to produce the first zone, an injection horizon would be needed, but with no depleted zones there is no place to put the water. Thus the sequential scheme fails because there is no starting point. Second, sequential completion of wells would also extend the length of time that the land is disturbed, which results in more harm to the environment as well as to the surface owner.

RESPONSE: The board agrees that the full environmental impacts of reinjection have not been analyzed and, in fact, may not be fully predictable. The board also acknowledges that there appears to be a lack of specific geologic and hydrologic information available to model the likelihood of impacts to the aquifers. Since the board has determined that it will not adopt the requirement to reinject due to its technical infeasibility for the entire industry, the lack of analyzing environmental impacts of the technology is a moot issue.

COMMENT NO. 42: Several comments were received describing the economic difficulties encountered in reinjecting CBNG development produced water in the region. Detailed reports and calculations were provided indicating that it was not economically feasible to locate, install, and operate the number and types of injection wells that would be required due to this rulemaking. According to these commentors, reinjection should not be required, but allowed as an option.

RESPONSE: The board agrees. The board did not have the level of detail available to industry and others for this analysis and the full economic analysis of this option has not been undertaken with the data submitted.

COMMENT NO. 43: Several commentors stated that, by mandating reinjection and treatment, the rules preclude opportunities for other beneficial uses and innovative technologies. According to these commentors, the rules limit the availability of new treatment techniques and deprive the landowners of water for stock watering and managed irrigation. Operators want and need options for water management and land owners need the water for its beneficial uses. Moreover, if shallow injection sites are not found, deep injection may be necessary and the water would be lost to any future beneficial use. For these reasons, reinjection and treatment should not be required, but allowed as an option.

RESPONSE: Since the board has determined that it will not adopt the rules requiring reinjection and treatment, the board is not precluding the use of CBNG water for beneficial uses.

COMMENT NO. 44: This petition would require establishing an additional regulatory program for the department.

RESPONSE: The board acknowledges that reviewing data demonstrating that reinjection is not feasible under a standard of "clear and convincing" evidence would be costly and time-consuming for department staff. The department has estimated that, at a minimum, one new employee with expertise in this area would be required.

COMMENT NO. 45: One commentor indicated that reinjection is not necessary to protect private water supplies from being depleted because there are published studies showing that there is a lack of vertical communication between shallow aquifers and the deeper coal beds. Most farm and ranch wells are less than 300 feet deep, while CBNG wells are greater than 300 feet deep. Another commentor indicated that ground water monitoring shows that actual drawdown is much less than that forecast by models.

In addition, there are other regulatory programs in place to protect private water supplies from CBNG development. These programs include DNRC's controlled ground water area, which requires water source mitigation agreements within one mile of CBNG development as well as monitoring ground water levels. In addition, BLM and the BOGC conduct NEPA/MEPA review of a CBNG developer's plan of development. In that process the agencies assess the extent of drawdown and impose mitigation measure. In addition, Class V UIC permits issued by EPA for reinjecting produced CBNG water also take into consideration the effect of Class V wells on drinking supplies.

RESPONSE: The board acknowledges that there are regulatory programs in place to protect private water supplies.

COMMENT NO. 46: One commentor is concerned that ground water supplies may be depleted if CBM developers are permitted to "waste" produced water from their wells without reinjection. The result would be that private water wells will run dry and property values will decrease.

RESPONSE: See Response to Comment No. 45.

COMMENT NO. 47: One commentor indicates that the proposed new rules should be strengthened to include provisions to ensure that injected water is of better quality than water in the receiving aquifer and that stock water ponds containing CBNG water should be lined.

RESPONSE: The requirement to reinject water of better quality than the receiving aquifer has not been proposed and is arguably outside the scope of this rulemaking. In addition, since the rules, if adopted, would preclude the disposal of CBNG water into any impoundments, the suggested requirement to line CBNG holding ponds is not relevant here. More importantly, any requirement to line ponds for the disposal of CBNG produced water is beyond the board's authority to adopt technology-based effluent limits under 75-5-305, MCA.

COMMENT NO. 48: Several commentors supported reinjection and treatment because those requirements would prevent the storage of CBNG

produced water in ponds. These commentors were concerned that the impounded water would cause damage to soils and to adjacent streams. Other commentors opposed reinjection as the sole method of disposal because infiltration ponds containing CBNG water recharge depleted aquifers and allow the immediate beneficial use of the impounded water for cattle and wildlife.

RESPONSE: The board has no authority under the Water Quality Act to specifically prohibit or require the use of ponds or impoundments for the storage of CBNG water. Although the adoption of rules requiring reinjection and treatment would effectively preclude the use of storage ponds, the board is declining to adopt those requirements as explained previously in these responses. Consequently, the board is neither prohibiting nor promoting the use of storage ponds in this rulemaking.

COMMENT NO. 49: The federal Clean Water Act (CWA) requires that, when standards are revised, certain considerations must be given, such as "their use for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes." 33 U.S.C. 1313(c). The proposed rules for reinjection and treatment fail to take into consideration both the potential agricultural and industrial uses of the produced water.

RESPONSE: The comment references Section 303(c) of the CWA, which governs the states' adoption of water quality standards for the protection of the nation's waters. That provision of the CWA does not apply here, since the proposed treatment requirements are not being adopted for the purposes of establishing and protecting the beneficial uses of Montana's waters. Rather, the board proposed technology-based treatment requirements which, as the name suggests, are based upon technology rather than water quality. Under 75-5-305, MCA, the board may adopt minimum treatment requirements so long as the requirements are "cost-effective and economically, environmentally, and technologically feasible." Accordingly, the board need not consider the designated uses of Montana's water ways or the potential uses of CBNG wastewater when adopting treatment requirements under 75-5-305, MCA.

COMMENT NO. 50: Several commentors stated that the adoption of the rules would diminish property values and private rights. These commentors do not want to be limited in their use of CBNG water for its use in stock tanks only. Landowners want to be able to work directly with CBNG developers to determine how to manage CBNG water produced on their land. Therefore, they request the board not to adopt rules limiting their options.

RESPONSE: Since the board has determined that it will not adopt the new rules mandating reinjection and treatment as the sole method of disposal, the board has also determined that it will not adopt the new rule providing a narrow exemption from those two methods of disposal - that is, the exemption for CBNG water put into stock watering tanks. The board is declining to adopt the exemption for stock water tanks because an exemption from rules that do not exist is meaningless.

TECHNOLOGY-BASED EFFLUENT LIMITS

COMMENT NO. 51: Several commentors stated that the board should not assume that reverse osmosis (RO) and ion exchange (IX) are proven systems that can easily be used as "off-the-shelf" systems for CBNG produced water. Unlike conventional RO systems that operate at relatively low recovery rates for treating drinking water, high recovery systems are required for treating CBNG water. For example, most "off-the-shelf" RO systems are used for treating "clean" groundwater and city water supply sources. Thus, conventional RO systems typically operate at 75% recovery or less. Those recovery rates are inadequate for treating CBNG water. In order to minimize the brine that will require disposal, the recovery rate of RO and IX for the treatment of CBNG water must exceed 95% removal. At these higher recovery rates, "off-the-shelf" systems are simply not available. Moreover, designing an RO system capable of operating at high recoveries is very difficult and would require extensive pretreatment to minimize membrane fouling. Consequently, a significant amount of design and testing would be necessary prior to developing a system that could provide the recovery requirements for treating CBNG water.

RESPONSE: The board acknowledges that the evidence indicating that RO and IX are proven "off-the-shelf" technologies for treating CBNG water is incluclusive. IX treatment systems are currently being used at sites in both Wyoming and Montana and RO systems are in use in Wyoming to meet applicable permit limits. However, the record is inconclusive as to the guaranteed success of these treatment systems when applied industry-wide and in all types of conditions. None of these systems are treating CBNG water to the standards outlined in the proposed rule. Since the evidence is inconclusive as to whether or not RO and IX are technologically feasible for treating all CBNG produced water at the level necessary to achieve some of the proposed effluent limits in New Rule VIII, as required by 75-5-305, MCA, the board is declining to adopt the proposed effluent limits.

COMMENT NO. 52: The effluent limits proposed in New Rule VIII are not achievable using current water treatment technologies. In order to reliably and consistently achieve the proposed limits using IX or RO, two treatment trains operating in series (essentially doubling the level of treatment discussed in the petition) would be required.

For example, the most widely used treatment technology in the region today, IX, does not produce water quality that would meet the effluent standards in the proposed rules. In order to meet these effluent standards, additional treatment steps would be required, including a second treatment chain containing an anion exchange resin and associated chemical feed equipment. Even then, this additional stage of treatment would not guarantee compliance with the effluent limits without testing. The second stage of treatment would also produce additional brine requiring disposal. The capital and operating costs of this expanded treatment system has not been considered in the economic analysis for these rules.

RESPONSE: The board acknowledges that the data and reports submitted in support of the rules are inconclusive in establishing the technical feasibility of RO and IX with respect to meeting some of the proposed effluent limits. The board further agrees that the data did not include an analysis of a second phase of treatment and associated economic analysis. Given the inconclusive data

supporting the technical and economic feasibility of some of the treatment requirements in New Rule VIII, the board is declining to adopt the rule.

COMMENT NO. 53: The technologies identified for use to meet the proposed effluent limits, RO and IX, have not been thoroughly evaluated for their performance in the region. In particular, RO has very limited use in the Powder River Basin. The one RO system known to be operating in the Powder River Basin is experiencing significant fouling from biological and colloidal constituents present in CBNG produced water and may soon be shut down due to these problems. According to one commentor, there are very few RO systems used to treat any industrial wastewater due to the potential for membrane fouling. Instead, most RO systems are used to treat relatively clean water sources such as a city water supply or "clean" ground water sources.

RESPONSE: Given the inconclusive evidence on the technical and economic feasibility of RO and IX for treating to the level required by some of the proposed effluent limits, the board is declining to adopt the proposed treatment as stated in Responses to Comment Nos. 50, 51, and 55.

COMMENT NO. 54: Treatment to an SAR of 0.5 and an EC of 233 µmhos/cm may produce an effluent that, when added to streams and rivers, will create water quality conditions that are inappropriate for irrigation use and will also result in the aggressive releasing of metals from the streambed. As a result, the effluent discharged into the rivers could negatively affect both aquatic species and irrigation.

RESPONSE: The argument that treated water under the rules will have an adverse impact on irrigation and aquatic life has not been demonstrated by data presented during the rulemaking. Whether or not the treated water would have adverse impacts to rivers is an issue that would need to be evaluated prior to adopting any treatment requirements according to 75-5-305, MCA. Since the board is declining to adopt the new rules imposing treatment, the issue does not need to be resolved in this rulemaking.

COMMENT NO. 55: The treatment requirements in some cases are actually below detection limits of current technology.

RESPONSE: The board is aware that some of the proposed effluent limits are below the detection limits of current technology. However, this is not a unique situation in terms of water quality regulations. For example, some of the numeric water quality standards adopted by the board are similarly below currently available detection limits.

COMMENT NO. 56: No data has been presented to support the cost estimates for meeting the proposed new standards. Instead, all cost estimates presented to the board, including a draft EPA report, Kuipers' report, and the CDM/PAW report, are hypothetical and based on meeting a particular recovery with absolutely no analysis of meeting the proposed discharge limits. Since the cost of treatment increases with more stringent discharge limits, meaningful and accurate

cost estimates can only be made when the proposed discharge limits are taken into account.

Commentors also pointed out that the economic report prepared in support of the rules contains numerous omissions and errors, which resulted in under-estimating the costs of treatment by a factor of 6.4 (i.e., 640%). They also point out that the errors in the report are made worse given the fact that the report fails to acknowledge the costs associated with doubling the level of treatment that would be necessary to meet the proposed effluent limits. They conclude that the economics of treatment necessary to meet the proposed new standards have yet to be determined. In order to produce a realistic cost estimate, an analysis must be prepared that is site-specific and considers such factors as the quality of the produced water, the proposed discharge limits, site location, and brine disposal costs.

RESPONSE: In order to adopt the proposed technology-based discharge limits, the board must find that the proposed treatment is both cost-effective and economically feasible. 75-5-305, MCA. The board agrees that the record is inconclusive in demonstrating that the treatment necessary to meet all of the proposed discharge limits is cost effective or economically feasible.

COMMENT NO. 57: Several commentors point out that the treatment technologies identified in this rulemaking have environmental and public safety impacts that have not been analyzed. For example, one typical treatment system operating at 90% recovery would generate approximately 63 truck loads of brine each week. The environmental impacts associated with hauling the brine, such as dust, noise, and road disturbance, would need to be considered throughout the basin.

In addition, all RO and IX systems require acid chemicals for treatment of produced water. Consequently, if treatment is required basin-wide, the environmental and safety issues associated with hauling chemicals on public roads needs to be considered by the board prior to adopting the rules.

RESPONSE: The board agrees that the environmental and public safety impacts associated with the proposed treatment requirements would need to be analyzed if those requirements were adopted by the board. See 75-5-305, MCA. Since the board is declining to adopt those requirements, an analysis of the environmental and safety impacts of the requirements is not necessary.

COMMENT NO. 58: Several commentors supported the proposed rule by stating that the proposed technology-based limits would greatly reduce the impacts from SAR and EC resulting from coal bed methane development in Montana. They also stated that establishing technology-based effluent limitations on a statewide basis will speed up the MPDES permitting process and reduce the delays that the methane industry is currently experiencing in obtaining MPDES permits.

RESPONSE: The board does not agree that the adoption of the proposed technology-based effluent limitations will "speed up" the permitting process. The proposed effluent limit of "zero discharge" must be met by all CBNG produced water unless a waiver is obtained. Given the complex technical issues associated with obtaining a waiver from the "zero discharge" limitation, it is clear that the rules do

nothing to shorten the time frame for obtaining a MPDES permit where one is required by the rules, but would lengthen the process instead.

COMMENT NO. 59: Several commentors opposed the rulemaking stating that the technology based effluent limits are unnecessarily low. The effluent limits would result in treatment that would clean up discharges to levels substantially below ambient in-stream water quality and substantially below the levels necessary to achieve the existing water quality standards and nondegradation criteria.

RESPONSE: The board agrees the effluent limits in New Rule VIII are set at levels that are below ambient in-stream concentrations and well below the levels necessary to achieve existing water quality standards and nondegradation criteria. The board notes, however, that since technology-based limits are derived from the best available technology, it is not unusual that such limits are more stringent than necessary to meet applicable water quality standards.

COMMENT NO. 60: Several commentors stated that the proposed effluent limits of EC and SAR are significantly more stringent than Montana's water quality standards and well below the existing concentration of those parameters in the waters of the Powder River Basin. Consequently, they object to the proposed effluent limits by arguing that CBNG producers would be affirmatively required to improve the quality of Montana's streams so that the water could then be degraded by downstream irrigation and other uses.

RESPONSE: The fact that nonpoint sources, such as irrigation practices, are not directly regulated by the federal CWA or the Montana Water Quality Act is not a reason for the board not to adopt treatment requirements for point sources.

COMMENT NO. 61: Although the proposed treatment requirements in New Rule VIII are set forth as "minimum" requirements, the requirements are most likely intended to be maximum limits, not minimum limits. For several parameters, the average concentrations must be kept within a range (e.g., the calcium average concentration must be between 0.1 mg/L and 0.2 mg/L). There is no apparent reason to set a "minimum" standard as a range, nor is there any reason to limit concentrations in a range. Under this provision, a calcium average of either 0.08 mg/L or 0.3 mg/L is out of compliance.

RESPONSE: The board agrees that the rule is not clear and, if adopted, would require clarification. Since the board is not adopting the rule, no change to the rule is necessary.

COMMENT NO. 62: Applying the treatment based effluent limitations to the mathematical calculations for SAR will result in a range from 2.52 to 5.35. The upper range of this limitation is higher than the allowable average for SAR in the existing numeric standards for the Tongue River and Rosebud Creek at any given time (3.0 to 5.0). It is also higher than the allowable maximum numeric standard for SAR of 4.5 in the Tongue River and Rosebud Creek during the irrigation season (Mar. 2-Oct. 31). It is also higher than the proposed instantaneous discharge SAR of 0.5.

RESPONSE: The board acknowledges that there are unresolved issues with the proposed effluent limitations in New Rule VIII. The issue identified by this comment is another reason for not adopting the proposed rule.

COMMENT NO. 63: The proposed arsenic treatment standard of less than 0.0001 mg/L is 100 times lower than the current standard of 0.010 mg/L for drinking water and over 1000 times lower than required for ecologic impacts. The proposed arsenic limit cannot be detected by current monitoring technology, and is lower than current treatment performance by a factor of 10.

RESPONSE: The board acknowledges that the arsenic standard in the rule is well below the state's human health standard for arsenic of 0.010 mg/L, and may be at levels that cannot be detected or achieved using current treatment technologies. Since the board is not adopting the arsenic treatment standard in New Rule VIII, no change will be made in response to concerns raised in this comment.

COMMENT NO. 64: There are inconsistent treatment limits for various parameters within New Rule VIII. The two major inconsistencies are the limits for EC and SAR. EC is based on the ionic concentrations of salt, such as the cations calcium (Ca), magnesium (Mg), sodium (Na), and the anions chloride (CL), sulfate, and carbonate, and other ions in water. Treating produced water and removing Ca, Mg, and Na to the levels identified in the proposed rule will create an EC value much less than the 233 µmhos/cm level established in the same rule.

In addition, meeting the maximum value of 0.5 in the rule for SAR would result in a violation of the minimum standards established for Ca and Mg. In turn, meeting the average treatment standards for Ca, Mg, and Na, would result in a violation of the proposed standard of 0.5 for SAR.

RESPONSE: The board acknowledges that there are inconsistencies among the limitations specified in New Rule VIII. This issue is another reason for not adopting the proposed rules.

COMMENT NO. 65: Some level of ions in water, such as Ca and Mg, are beneficial for most water uses and therefore limits on these constituents are typically not controlled by water quality standards. Limits on these ions and salts are generally accomplished by adopting EC and TDS standards, thereby establishing minimum and maximum levels on salts in a water body. Normally, TDS standards for drinking water allow Ca and Mg concentrations of 100 mg/L, as appropriate and beneficial, and restrict levels above 300 mg/L. Levels below this are not recommended because of the aggressiveness of the resulting water's ability to leach heavy metals and toxic minerals into the water. In addition, the low alkalinity level will significantly reduce the buffering capacity of the water.

RESPONSE: The record is inconclusive as to the problems associated with the low effluent limits established in New Rule VIII. Due in part to the fact that these problems are unresolved, the board has determined that it will not adopt New Rule VIII.

COMMENT NO. 66: For irrigation and livestock use, Ca, Mg, and EC values can be significantly higher than that recommended for drinking water. Therefore, the

proposed standards for Ca and Mg of 0.1 and 0.6 mg/L, depending on the use, are at least 1000 times below the generally accepted levels for drinking water and almost 10,000 times below the general levels appropriate for livestock and irrigation use.

RESPONSE: The board is aware that the effluent limitations are well below the levels typically established to protect beneficial uses. Since the board is declining to adopt the effluent limitations in New Rule VIII, no change to those limits will be made in response to this comment.

COMMENT NO. 67: The proposed effluent limit of 0.5 for SAR is unnecessarily restrictive and well below ambient conditions in the Powder River Basin. More importantly, no single SAR level defines irrigation suitability. Instead, irrigation suitability of a water body depends upon the relationship between EC and SAR in the water. Depending on the EC levels, SAR levels as high as 20 pose no risk to irrigation. Given these facts, there is no rational basis for the proposed effluent limit of 0.5 for SAR.

RESPONSE: The proposed effluent limit for SAR is not intended to protect beneficial uses, as suggested by the commentor, but is proposed as an end-of-the-pipe limit that can be met most of the time using current treatment technologies. Since the board is not adopting the effluent limits as explained elsewhere in these Responses, no change to the effluent limit for SAR will be made in response to this comment.

COMMENT NO. 68: New Rule VIII would impose an effluent limit of less than 1 part per million for Ca and Mg. This is an extremely low level. The board has offered no reason for imposing effluent levels at this level.

The proposed effluent limits are unreasonable given that Ca and Mg have no adverse effect on stream or irrigation quality, but rather can have beneficial effects on water quality. For example, the presence of Ca and Mg in a stream buffer can help mitigate the adverse effects of sodium. Given that New Rule VIII would severely limit and reduce SAR in the Tongue and Powder rivers, it is incongruous to also severely limit Ca and Mg, which act to moderate the adverse affects of sodium in water. The board needs to explain how the proposed limits on Ca and Mg interact with sodium and the proposed limit for SAR and explain its reasons for adopting these limits.

RESPONSE: As explained throughout these responses, the board is not adopting the effluent limits set forth in New Rule VIII primarily due to a lack of evidence proving the technical and economic feasibility of meeting the new limits. The board also recognizes that there are issues, such as raised in this comment, which would need to be addressed if the rules were adopted.

COMMENT NO. 69: The EC standard of 233 µmhos/cm or 0.2 dS/m is overly restrictive and has no rational basis. Very low salinity water (or water with an EC less than the 0.2 dS/m level proposed in New Rule VIII, commonly known as "hungry water") may adversely impact soil quality. According to the United Nations Food and Agricultural Organization:

> Low salinity water is corrosive and tends to leach surface soils free of soluble minerals and salts, especially calcium, reducing their strong stabilizing influence on soil aggregates and soil structure. Without salts and without calcium, the soil disperses and the dispersed finer soil particles may fill many of the smaller pore spaces, sealing the surface and greatly reducing the rate at which the water infiltrates the soil surface.

Thus, rather than ensuring an agricultural use for the Tongue and Powder river basins, the effluent limit of 0.2 dS/m for EC may actually contribute to the formation of "hungry water" which may diminish soil quality within those basins and harm the very use the rules are intended to protect.

RESPONSE: The board acknowledges that there are unresolved issues that would need to be explained and resolved prior to the board's adoption of the effluent limitations in New Rule VIII. Consequently, the board is not adopting any of the limitations in the rule due in part to these unresolved issues.

MISCELLANEOUS COMMENTS

COMMENT NO. 70: The proposed rule violates the Montana Environmental Policy Act (MEPA) because the environmental consequences of requiring reinjection, of the waiver process, of treatment, and of classifying EC and SAR as "harmful" for purposes of nondegradation review have not been studied by the board or the department.

RESPONSE: Since the board has determined that it will not adopt the proposed rule requiring reinjection and the accompanying waiver process, the requirements of MEPA do not apply to the board's decision to take no action on those rules.

Similarly, the board is not adopting technology based treatment requirements. Furthermore, adoption of treatment requirements would not trigger MEPA because no treatment can occur without further state action from the Board of Oil and Gas Conservation (BOGC) and from the department. According to the Record of Decision (ROD) adopted by the BOGC, environmental impacts from a proposed CBNG project, including treatment, will be analyzed under MEPA during its review of the Plan of Development for the project. In addition, any proposal to treat and discharge CBNG water is subject to the requirement to obtain an MPDES from the department prior to discharging. Since any proposal to treat must first be approved by the BOGC and the department, the approval of those agencies is the "state action" that triggers an analysis of the environmental impacts of treatment under MEPA as required by the board's rules.

Although the board is adopting the amendment classifying EC and SAR as "harmful" for purposes of conducting nondegradation review, such a review will only occur when the department receives an application for an MPDES permit requesting a "new or increased discharge" for these parameters. The department's action on the MPDES application will be the "state action" that triggers an analysis of the environmental impacts of classifying EC and SAR as "harmful." Because there are a number of ways that a permittee could comply with the nondegradation rules as amended by this rulemaking, meaningful analysis can be done at that time.

COMMENT NO. 71: The amendment to ARM 17.30.670(7) deletes "unaltered ground water from coal bed methane production" and replaces that phrase with "methane wastewater" with literally no supporting rationale or justification for doing so.

RESPONSE: The board does not consider the deletion of "unaltered ground water" and the amendment substituting "methane wastewater" for the deleted term to be a substantive change to the existing rule. Since the Ninth Circuit has found that "unaltered ground water" is an "industrial waste" because it is an "unwanted byproduct" of CBNG extraction, the board believes that the terms "methane wastewater" and "unaltered ground water" are interchangeable. See, NPRC v. Fidelity Exploration and Development Co., 325 F.3d 1155 (9th Cir. 2003).

COMMENT NO. 72: The board has provided no rationale for repealing the nonseverability clause in ARM 17.30.670 because none exists. In 2003, the board logically and reasonably adopted a nonseverability clause due to the interrelated and interdependent nature of the numeric standards set forth in (2) through (5) of the rule, and the means prescribed for determining compliance with those standards in (6) and (7). Logically, if the method of determining compliance in (6) is declared invalid, then the actual numeric water quality standards set forth in (2) through (5) would have no useful function since the method of determining compliance is void. No reason has been provided for repealing the severability clause in this rulemaking.

RESPONSE: The board disagrees that a reason for repealing the nonseverability clause does not exist. In 2003, the board adopted the nonseverability clause in order "to preserve the board's primary objective of adopting numeric standards that will protect all existing and designated uses of the waters without unnecessarily restricting discharges that will not harm those uses." 2003 Montana Administrative Register (MAR) at page 799, Issue No. 8. At the time, the board was concerned that a court might invalidate the narrative nonsignificance criteria for EC and SAR in (6) and judicially impose numeric nonsignificance thresholds that the board had already considered and rejected. Id. Since the board is amending the rule to eliminate the narrative nonsignificance criteria in (6), the board's original reason for adopting the nonseverability clause is no longer valid. The board is now repealing the clause because it serves no useful purpose.

COMMENT NO. 73: Comments submitted by members of the Montana Legislature stated that the intent of the rulemaking is to circumvent the intent of that legislative body. Their comments stated that many of the issues associated with CBNG have been - and will continue to be - considered by the Legislature and are appropriate for legislation rather than rulemaking.

RESPONSE: The board has authority under 75-5-305, MCA, to adopt effluent limitations for categories of industries, including the coal bed methane industry. The board also has authority under 75-5-301(2)(c), MCA, to adopt rules that establish significance levels under the nondegradation provisions of the water quality laws. Thus, the Legislature has delegated these functions to the board. In addition, Title 2, chapters 3 and 4, MCA, authorize the Environmental Quality Council to review and comment on board rules. Although the council submitted an

objection to the portion of the rules relating to reinjection, it did not submit an objection to the nondegradation rule amendment. However, pursuant to a request from 15 legislators, an economic impact statement on the rulemaking was prepared.

COMMENT NO. 74: Commentors supporting the amendment of ARM 17.30.670(7) argue that requiring the use of the seven-day average, one in ten year flows (7Q10) for CBNG permits is consistent with the way the department develops limits for all other permits and is appropriate for limiting discharges at critical low flows. Commentors opposing the mandatory use of the 7Q10 flow in CBNG permits point out that the requirement adds nothing, since ARM 17.30.635 already requires the use of 7Q10 for all permits, including CBNG permits.

RESPONSE: The board agrees that requiring the use of the 7Q10 for CBNG discharges is consistent with the way the department develops permit limits for all other discharges. The board notes that the reason the department consistently uses the 7Q10 for all permits is that the requirement to use the 7Q10 already exists in Montana's surface water quality standards regulations (ARM 17.30.635(4)) and in Montana's mixing zone rules (ARM 17.30.516). Since the requirement to use the 7Q10 already exists and applies to CBNG discharges as well as all other discharges, the board is declining to adopt the mandatory use of the 7Q10 in ARM 17.30.670(7) as originally proposed.

COMMENT NO. 75: Some commentors object to the deletion of the mandatory flow-based permit limits for CBNG discharges in ARM 17.30.670(7) by arguing that the deletion does nothing to protect beneficial uses and would remove the department's flexibility to derive appropriate permit limits.

RESPONSE: The board disagrees that removing the mandatory flow-based permit limits for CBNG discharges, as proposed in the amendment of ARM 17.30.670(7), would limit the department's discretion to derive appropriate permit limits. Instead, the removal of the requirement would give the department the discretion to derive appropriate permit limits using either a flow-based approach or a conventional approach. Accordingly, the board is amending ARM 17.30.670(7) to delete the mandatory flow-based requirement as originally proposed.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

By: */s/ Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State May 8, 2006.

DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 8.2.208 renewal dates and ARM 24.122.401 fee schedule for boiler operating engineers licenses	) NOTICE OF AMENDMENT))) (BOILER AND BOILER OPERATOR) PROGRAM)

TO: All Concerned Persons

1. On February 9, 2006, the department published MAR Notice No. 24-122-01 regarding the public hearing on the proposed amendment of the above-stated rules, at page 300 of the 2006 Montana Administrative Register, issue no. 3.

2. On March 2, 2006, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments or testimony were received.

3. The department has amended ARM 8.2.208 and ARM 24.122.401 exactly as proposed.

4. The department will apply the new fee schedule for boiler operating engineer license renewals that are due starting August 2006. Those renewal notices will be mailed to licensees on or about June 1, 2006.

DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State May 8, 2006.

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

In the matter of the amendment of ARM 24.141.405 fee schedule, and ARM 24.141.2102 continuing education, and the adoption of NEW RULE I licensee responsibilities, and NEW RULE II fee abatement	))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On January 12, 2006, the State Electrical Board (board) published MAR Notice No. 24-141-31 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 17 of the 2006 Montana Administrative Register, issue no. 1.

2. On February 3, 2006, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the February 13, 2006, deadline.

3. The board has thoroughly considered the comments made. A summary of the comments received and the board's responses are as follows:

COMMENT 1: Several comments were received in opposition to the proposed amendment to ARM 24.141.405 and 24.141.2102 changing the 3-year renewal cycle to a 2-year cycle. The commenters stated that a 2-year renewal would be in contrast to the 3-year national electrical code cycle.

RESPONSE 1: The board acknowledges the commenters' concerns and has determined that a 2-year renewal cycle is more in line with the board's and department's budgetary and appropriation cycles and will be more efficiently administered. The board is amending ARM 24.141.405 and 24.141.2102 exactly as proposed.

COMMENT 2: One commenter suggested that when the board raises licensing fees, the additional money should be used to enforce electrical licensing laws.

RESPONSE 2: The board notes that as an executive branch agency, the board is bound by a budget that must be reviewed and approved by the legislature and a substantial portion of the board's budget is allocated to and used to ensure licensure laws are enforced.

COMMENT 3: A commenter expressed a concern about possible redundancy or inconsistency between the language and purpose of New Rule I and an existing administrative rule, ARM 24.141.403. The commenter suggested that the two either

be merged into one, or that ARM 24.141.403 be repealed.

RESPONSE 3: The board determined that the commenter's concern is well founded and noteworthy. However, the board concluded that merging ARM 24.141.403 with New Rule I or repealing ARM 24.141.403 are changes which are too substantive to be done within the scope of this final rulemaking notice. The board will monitor the interaction between New Rule I and ARM 24.141.403 after New Rule I becomes effective, and will make any adjustments necessary regarding these two rules in a future rulemaking project.

COMMENT 4: One commenter suggested that the language proposed in (1)(b) of New Rule I be changed, for the sake of legal clarity, to read, “being adjudicated under Title 39, Montana Code Annotated, by the court or agency having jurisdiction, as having violated any workers compensation, unemployment insurance, or independent contractor law in Montana while engaged in the electrical trade.”

RESPONSE 4: The board determined that the suggested language change in (1)(b) adds clarity and an important legal distinction to this subsection of New Rule I and the board is amending the rule accordingly.

COMMENT 5: A commenter suggested that subsection (1)(a) of New Rule I should be clarified with respect to the point at which failure to correct code violations would ripen into unprofessional conduct.

RESPONSE 5: The board concluded that the commenter's concern is well founded and is amending subsection (1)(a) of New Rule I accordingly.

COMMENT 6: One commenter expressed a concern that New Rule I might not achieve the board's desired results due to a perceived lack of clarity in the proposal.

RESPONSE 6: While the board appreciates all comments received as part of the administrative rule process, the board is unable to respond meaningfully to this particular comment as the commenter failed to express any specific reason(s) for the concern. The board deliberated and discussed the problems which New Rule I attempts to resolve for many months prior to developing the proposed rule. Therefore, the board has confidently concluded that adopting New Rule I will move enforcement of electrical licensure laws in a positive direction. The board intends to monitor the effects of this rule on the state's electrical industry and will make appropriate adjustments in the future should they become necessary.

COMMENT 7: A commenter pointed out that the term "Montana State Electrical Code" is not defined in this rule proposal, and also noted that, notwithstanding the proposed new rule, licensed electricians could be subject to disciplinary proceedings under the statutes and administrative rules administered by the Building Codes Bureau (bureau).

RESPONSE 7: The board agrees with the commenter and is amending New Rule I

accordingly by adding the definition of "Montana State Electrical Code" to the rule. The board also acknowledges that licensed electricians are subject to the authority of the bureau, particularly relating to the bureau's permitting authority. The board believes and concludes that identifying uncorrected violations of the bureau's adopted electrical code as a form of unprofessional conduct under Title 37, MCA, will tie it effectively to the board's licensing rules for the purpose of disciplining licensees who perform substandard electrical work. In adopting New Rule I, the board intends to further underscore the importance of compliance with the statutes and administrative rules enforced by both the board and the bureau.

COMMENT 8: A commenter stated that the term "uncorrected violations" in subsection (1)(a) of New Rule I is too broad. The commenter claimed that electrical inspectors would interpret the term inconsistently due to uncertainty as to how much time will be allowed to correct or take issue with perceived violations.

RESPONSE 8: The board determined that the commenter's concern is well founded and is amending subsection (1)(a) of New Rule I accordingly.

COMMENT 9: One commenter expressed a concern that New Rule I "attempts to remove authority [to determine when an electrical license is required] from the State Electrical Board and give it to the Building Codes Division."

RESPONSE 9: The board notes that the language of 37-68-101(3), MCA, that authorizes the electrical board to require licensure of certain people working in the state's electrical industry is repeated verbatim in 50-60-601, MCA, a statute enforced by the bureau. The board believes this duplication of delegated authority by the legislature indicates an intent that the electrical board and the bureau should work together to enforce Montana's electrical licensure statutes. Toward that end, the bureau recently amended one of its administrative rules, ARM 24.301.431(7), to require that all electrical work done under a permit issued by the bureau must be done by people "who are licensed as an electrician or registered as an electrical apprentice." Since the amended rule will enable the bureau to initiate enforcement action(s) against permitees when the bureau's inspectors discover unlicensed personnel performing electrical work, the board believes the prospect of such actions will provide electrical contractors with a meaningful incentive to ensure that all employees who perform work covered by the state electrical code are properly licensed. Additionally, since ARM 24.301.431(7) is a provision of the state electrical code, violations of that provision would potentially be reportable to the board by bureau inspectors as unprofessional conduct by the licensee/permittee who allowed it. Thus, based upon the plain language of both underlying statutes and the recent revision of ARM 24.301.431(7), the board concludes that adopting (1)(a) of New Rule I will compliment both the bureau's and the board's efforts to protect the public's health, safety, and well-being, and will also enhance the board's ability to enforce licensing statutes and administrative rules.

4. The board has amended ARM 24.141.405 and 24.141.2102 exactly as proposed.

5. The board has adopted NEW RULE II (24.141.408) exactly as proposed.

6. The board has adopted NEW RULE I (ARM 24.141.2301) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.141.2301) UNPROFESSIONAL CONDUCT (1) remains as proposed.

(a) ~~uncorrected~~ failing to correct violations of the Montana State Electrical Code as adopted by the Department of Labor and Industry's Building Codes Bureau, after having received proper notice and adequate time to do so, as determined by the inspector involved in light of the seriousness of the violation(s) and other similarly relevant considerations;

(b) ~~failing to comply with all provisions of state law relating to workers' compensation insurance, unemployment insurance, and independent contracting~~ being adjudicated under Title 39, MCA, by the court or agency having jurisdiction, as having violated any workers' compensation, unemployment insurance, or independent contractor law in Montana while engaged in the electrical trade; and

(c) and (2) remain as proposed.

(3) For purposes of this rule, the term "Montana State Electrical Code" is defined as the edition of the National Electrical Code or any other model electrical code which is adopted and/or as it may be modified by the Department of Labor and Industry's Building Codes Bureau for use as a construction standard in and by Montana's electrical industry.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-68-201, MCA
IMP: 37-1-307, 37-1-316, 50-60-601, 50-60-603, 50-60-604, MCA

STATE ELECTRICAL BOARD
TONY MARTEL, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

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

Certified to the Secretary of State May 8, 2006

BEFORE THE DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of ARM 32.2.401, pertaining to license fees and the adoption of NEW RULE I, pertaining to permit fees and NEW RULE II, pertaining to miscellaneous fees	)))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On April 6, 2006, the Department of Livestock published MAR Notice No. 32-6-181 at page 853 of the 2006 Montana Administrative Register, issue number 7, regarding the amendment and adoption of the above-stated rules.

2. The Department of Livestock has adopted New Rule I (32.2.404) and New Rule II (32.2.405) exactly as proposed.

3. The Department of Livestock has amended ARM 32.2.401 as proposed, but with the following changes. Stricken matter interlined, new matter underlined:

32.2.401 DEPARTMENT OF LIVESTOCK LICENSE FEES (1) through (8) remain as proposed.

(9) Garbage feeder license as required by 81-2-502, MCA 5

(9) through (20) remain as proposed, but are renumbered (10) through (21).

4. The department noted that the existing category of "garbage feeder license" had been inadvertently omitted from the proposed rule amendment notice. The existing license category is therefore being inserted in its proper position in the rule, with the fee remaining the same.

5. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

BY:	/s/ Marc Bridges Marc Bridges Executive Officer Department of Livestock	BY:	/s/ Carol Grell Morris Carol Grell Morris Rule Reviewer

Certified to the Secretary of State May 8, 2006.

BEFORE THE DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of ARM 32.6.701, 32.6.702, 32.6.703, 32.6.704, 32.6.705, 32.6.706, 32.6.707, 32.6.708, 32.6.709, 32.6.710, 32.6.711, 32.6.801, 32.6.802, 32.6.803, 32.6.804, 32.6.805, 32.6.806, 32.6.807, 32.6.808, 32.6.809, 32.6.810, 32.6.811, 32.6.812, 32.6.813, 32.6.814, and 32.6.815 pertaining to animal feeding, slaughter, and disposal	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 9, 2006, the Department of Livestock published MAR Notice No. 32-6-180 regarding the proposed amendment of the above-stated rules at page 657 of the 2006 Montana Administrative Register, issue number 5. On April 20, 2006, the department published MAR Notice No. 32-6-183 at page 1021 of the 2006 Montana Administrative Register, issue number 8, regarding the extension of comment period on the proposed amendment of the above-stated rules.

2. The Department of Livestock has amended 32.6.701, 32.6.702, 32.6.703, 32.6.704, 32.6.705, 32.6.706, 32.6.707, 32.6.708, 32.6.709, 32.6.710, 32.6.711, 32.6.801, 32.6.802, 32.6.803, 32.6.804, 32.6.805, 32.6.806, 32.6.807, 32.6.808, 32.6.809, 32.6.810, 32.6.811, 32.6.812, 32.6.813, 32.6.814, and 32.6.815 as proposed.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

BY: /s/ Marc Bridges
Marc Bridges
Executive Officer
Department of Livestock

BY: /s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State May 8, 2006.

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

In the matter of the amendment of ARM 32.28.505 pertaining to horse racing purse disbursement	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 6, 2006, the Board of Horse Racing, Department of Livestock, published MAR Notice No. 32-6-182 regarding the proposed amendment of ARM 32.28.505 pertaining to horse racing purse disbursement at page 860 of the 2006 Montana Administrative Register, issue number 7.

2. The Board of Horse Racing has amended ARM 32.28.505 exactly as proposed.

3. No comments or testimony were received.

BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK

BY: /s/ Marc Bridges
Marc Bridges
Executive Officer
Department of Livestock

BY: /s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State May 8, 2006.

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

In the matter of the adoption of Rule I through XV and the amendment of ARM 37.106.1902, 37.106.1906, and 37.106.1946 pertaining to outpatient crisis response facilities	)))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On December 8, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-363 at page 2428 of the 2005 Montana Administrative Register, issue number 23, regarding the proposed adoption and amendment of the above-stated rules. On April 20, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-377 pertaining to the notice of extension of comment period on the proposed adoption and amendment of the above-stated rules, at page 1023 of the 2006 Montana Administrative Register, issue number 8.

2. The department has adopted new rules I (37.106.1975), III (37.106.1979), VI (37.106.1982), VIII (37.106.1987), IX (37.106.1989), X (37.106.1993), XI (37.106.1994), XII (37.106.1995), XIII (37.106.1996), XIV (37.106.1997), and XV (37.106.1990) as proposed.

3. The department has amended ARM 37.106.1946 as proposed.

4. The department has adopted the following rules as proposed but with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE II (37.106.1976) OUTPATIENT CRISIS RESPONSE FACILITY: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) remains as proposed.

(2) "Outpatient crisis response facility" means an outpatient facility operated by a licensed hospital or a licensed mental health center that provides evaluation, ~~assessment,~~ intervention, and referral for individuals experiencing a crisis due to serious mental illness or a serious mental illness with a co-occurring substance use disorder. The facility may not provide services to a client for more than 23 hours and 59 minutes from the time the client arrives at the facility. The facility must discharge or transfer the client to the appropriate level of care.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

RULE IV (37.106.1980) OUTPATIENT CRISIS RESPONSE FACILITY: ORGANIZATIONAL STRUCTURE (1) through (2) remain as proposed.

(3) Each outpatient crisis response facility shall employ or contract with a program supervisor ~~who is a licensed mental health professional~~ knowledgeable about the service and support needs of individuals with co-occurring mental illness and intoxication/addiction disorders who may be experiencing a crisis. The program supervisor must be site based.

(4) Each outpatient crisis response facility shall employ or contract with a licensed health care professional as defined in 50-5-101(34), MCA for all hours of operation. The licensed health care professional may be the program supervisor.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

RULE V (37.106.1981) OUTPATIENT CRISIS RESPONSE FACILITY: STAFFING AND OPERATIONS (1) through (5) remain as proposed.

(6) The facility must maintain locked and secured storage for all medications kept on site.

(6) through (10) remain as proposed but are renumbered (7) through (11).

~~(11)~~ (12) The facility must maintain progress notes for each client. The progress notes must be entered following the clinical intake assessment and updated ~~in a timely manner~~ by the end of each shift into the client's clinical record. The progress notes must describe the client's physical condition, mental status, and involvement in treatment services.

(12) through (13)(b) remain as proposed but are renumbered (13) through (14)(b).

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

RULE VII (37.106.1983) OUTPATIENT CRISIS RESPONSE FACILITY: CLINICAL RECORDS (1) Each crisis response facility shall collect assessment data and maintain clinical records on all clients who receive services.

(2) Each facility must ensure the confidentiality of clinical records in accordance with the ~~Uniform Health Care Information Act, Title 50, chapter 16, part 5, MCA~~ Health Information Portability and Accountability Act (HIPAA).

(3) through (3)(g) remain as proposed.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

5. The department has amended the following rules based on public comment. Adding the definition of these terms to ARM 37.106.1902 and 37.106.1906 rather than the rule in which the terms are used does not provide substantive change to the rules. Matter to be added is underlined. Matter to be deleted is interlined.

37.106.1902 MENTAL HEALTH CENTER: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) through (9) remain the same.

~~(10)~~ (14) "Inpatient ~~C~~crisis stabilization ~~program~~ facility" means 24 hour supervised treatment for adults with a mental illness for the purpose of stabilizing the individual's symptoms.

(11) through (14) remain the same but are renumbered (10) through (13).

(15) through (30) remain the same.

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-204, MCA

37.106.1906 MENTAL HEALTH CENTER: SERVICES AND LICENSURE

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

(4) A mental health center, with the appropriate license endorsement, may provide one or more of the following services:

(a) through (f) remain the same.

(g) an inpatient crisis stabilization ~~program~~ facility; ~~or~~

(h) an outpatient crisis response facility; or

~~(h)~~ (i) a comprehensive school and community treatment program.

(5) through (8)(e) remain the same.

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-204, MCA

6. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

General Public Comments: Questions, Clarifications:

COMMENT #1: A facility that offers chemical dependence and mental health services objects that it was not given the opportunity to participate in the development of the proposed rules.

RESPONSE: The department disagrees. The department held a public hearing on the proposed rules on January 4, 2006. The public comment period was extended to May 5, 2006, to assure all entities or individuals had ample time to comment on the rule. The commentor submitted written testimony to the department. The department has followed all requirements of the Montana Administrative Procedure Act.

COMMENT #2: As they are, the rules are inadequate for the purpose they are intended to serve and will only serve to exacerbate the problems connected to the provision of services to individuals in crisis due to serious mental illness and especially those who have concomitant substance abuse issues.

RESPONSE: The department disagrees. The rules as proposed, and amended

following the comment period, will be adequate in the full continuum of mental health services. The proposed Outpatient Crisis Response Facility (OCRF) is specific to individuals in mental health crisis and will refer to other services in the continuum as patient need indicates. An OCRF is not intended to cover the broad array of all mental health needs in a community. The department feels the rule is adequate for its intended purpose.

COMMENT #3: The proposed rules need to be addressed by the department pursuant to 2-4-305, MCA. Requisites for Validity- authority and statement of reasons.

RESPONSE: The department agrees and is in compliance with the requirements found at 2-4-305, MCA.

COMMENT #4: Diverting individuals experiencing a crisis from hospital ERs to an OCRF may be a wholesale violation of the Emergency Medical Treatment and Active Labor Act (EMTALA).

RESPONSE: The department disagrees. EMTALA only applies to a patient presenting at a hospital emergency department. Emergency room (ER) staff would have an OCRF as an additional mental health service resource, if after a medical assessment the ER found it appropriate to transfer to the OCRF.

COMMENT #5: The department has no statutory authority providing for the adoption of the proposed rules to establish these outpatient services as a health care facility.

RESPONSE: The department disagrees. Section 50-5-101(23), MCA includes the term "mental health center" and "hospital" in the definition of a health care facility. The department clearly has the authority to promulgate rules for mental health centers and hospital services. Section 50-5-101(37), MCA defines a mental health center as "a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services." The OCRF rules describe the requirements for a mental health service that would either be free standing or added to a mental health center facility license as an endorsement. Outpatient services are included under a hospital license as an outpatient service.

COMMENT # 6: A proposed site for provision of this outpatient service in Billings will not be located at one of the hospitals or the mental health center and therefore will not be a portion of one of those facilities. Consequently the proposed OCRF will not be a "health care facility" as defined in 50-5-101(23), MCA.

RESPONSE: The department disagrees. There are no requirements in state law mandating a single site for all services provided. Hospital and mental health services are not restricted to one all inclusive location or site. There are 16 licensed mental health center facilities with approximately 140 different satellite office service

locations. Additionally, several hospitals in the state of Montana are operating in two or more distinct locations under one license.

COMMENT #7: Because the OCRF will be an outpatient service and will not be a health care facility, as defined in statute, an intoxicated person would not be able to be transported to an OCRF by law enforcement. Even with the adoption of the proposed rules, law enforcement will still be required to transport an intoxicated person to a private treatment facility, a mental health center, or to the ER under the provisions of 53-24-303, MCA, treatment and services for intoxicated persons.

RESPONSE: The department disagrees. OCRF services are provided by a licensed mental health center or hospital under 50-5-101(23), MCA.

COMMENT #8: If an ambulance is called to transport an intoxicated person, the ambulance will have no choice but to transport the person to the emergency department of a hospital. If the medical condition of an intoxicated person is serious enough that the person needs transportation by an ambulance, then it is serious enough that the ambulance would be assuming substantial risk by transporting the patient to a low-level outpatient program rather than a hospital ER.

RESPONSE: The department agrees with this comment. Transportation should be provided to the nearest hospital ER department.

COMMENT #9: Many of the individuals who will be admitted to the proposed crisis response facility in Billings will be highly intoxicated individuals who may secondarily exhibit serious mental illness symptoms. Attempting to divert people in crisis to the low-level outpatient program described in the proposed rules could be life threatening to many of these individuals. At the very least, they are in need of immediate medical screening with implementation of medications to prevent life threatening withdrawal.

RESPONSE: The department disagrees. These rules are intended to allow communities to develop an OCRF as part of a continuum of care and resources for meeting the needs of persons experiencing a psychiatric crisis. These rules are not specific to Billings. If an OCRF determines that services beyond the scope of the facility are required, transfer to an appropriate level of care will be initiated under the transfer agreement.

COMMENT #10: A reading of the rules does not indicate that any medical personnel are required to be on site at this facility to provide immediate medical screening, conduct a medical evaluation, or implement medications during the 23 hours and 59 minutes the patient can remain at the facility. The absence of any required staffing to include individuals, such as a licensed nurse, capable of assessing and consulting with a medical director regarding substance withdrawal seems to be a serious deficiency in these rules and compromises the safety of the clients of a crisis response facility established under the proposed rules.

RESPONSE: The department agrees and will amend the rule to indicate that a licensed health care professional as defined at 50-5-101(34), MCA must be on site during all hours of operation. A licensed health care professional means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the Department of Labor and Industry.

The department will strike the words in RULE IV (37.106.1980) OUTPATIENT CRISIS RESPONSE FACILITY: ORGANIZATIONAL STRUCTURE (3) Each outpatient crisis response facility shall employ or contract with a program supervisor ~~who is a licensed mental health professional~~ knowledgeable about the service and support needs … The department will add the following language to RULE IV (37.106.1980) OUTPATIENT CRISIS RESPONSE FACILITY: ORGANIZATIONAL STRUCTURE. New Section (4) Each outpatient crisis response facility shall employ or contract with a licensed health care professional as defined in 50-5-101(34), MCA for all hours of operation. The licensed health care professional may be the program supervisor.

COMMENT #11: The potential impact of the proposed rules on the distribution of liquor, beer, and wine taxes provided for in 53-24-206(3), MCA, may be an unintended consequence of the adoption of the proposed rules. The commentor strongly asserts that the proposed rules need to clearly provide that OCRFs are not chemical dependency programs and do not qualify for distribution of liquor, beer, and wine tax funds under 53-24-206(3), MCA.

RESPONSE: The department agrees. OCRF is a licensed health care facility under Title 50, MCA and is not eligible for receipt of distributed liquor, beer, and wine tax funds under 53-24-206(3), MCA.

COMMENT #12: The commentor respectfully submits that the proposed rules should be rejected in total.

RESPONSE: The department disagrees. These rules are intended to allow a community to develop an OCRF as part of a continuum of care and resources for meeting the needs of persons experiencing a psychiatric crisis.

RULE II (37.106.1976) Outpatient Crisis Response Facility: Definitions

COMMENT #13: In proposed Rule II(2) (37.106.1976) - "individuals experiencing a crisis due to serious mental illness or a serious mental illness with a co-occurring substance use disorder" - appears to fall within the definition of "emergency medical condition" as that term is defined in the EMTALA law at 42 USC 1395dd(e) and 42 CFR 489.24(b). Adoption of the proposed rules in an attempt to divert individuals suffering these medical conditions from hospital ERs to a low-level outpatient program appears to be contrary to the spirit if not the letter of EMTALA.

RESPONSE: The department disagrees. The adoption of the rule is not intended to divert individuals suffering medical conditions from a hospital ER. ER services continue to be available. EMTALA does not apply to an OCRF.

COMMENT #14: The department should define the term "assessment".

RESPONSE: The department understands the commentor's concern and will strike the word "assessment" from RULE II (37.106.1976) OUTPATIENT CRISIS RESPONSE FACILITY: DEFINITIONS (2) Outpatient crisis response facility.

COMMENT #15: Does the term: "Outpatient crisis response facility" need to be defined in Rule II (37.106.1976) as well as in ARM 37.106.1902(10)?

RESPONSE: The department agrees and will add the definition of outpatient crisis response facility to ARM 37.106.1902.

COMMENT #16: Please consider adding the term: "Inpatient" to ARM 37.106.1902(10) and ARM 37.106.1906(4)(g) for clarity.

RESPONSE: The department agrees and will add the word "inpatient" to ARM 37.106.1902(10) and ARM 37.106.1906(4)(g) and will also add the term "outpatient crisis response" to ARM 37.106.1906(4)(h).

COMMENT #17: While a medical director is required under proposed Rule IV(2) (37.106.1980) to be available for consultation, the medical director is not required to be on site.

RESPONSE: The department agrees and refers the commentor to the changes to Rule IV as described in the response to Comment #10.

COMMENT #18: The mental health professional in proposed Rule IV(3) (37.106.1980) is required only to be knowledgeable about intoxication/addiction disorders and is not required to be qualified to address the needs or to assess signs and symptoms of substance withdrawal.

RESPONSE: The department disagrees. An OCRF is limited to a less than 24 hour service and is not intended to treat addiction disorders and/or substance withdrawal, but can refer to appropriate services. Pursuant to the changes described in the department's response to Comment #10, a licensed health care professional will be on site to assess the individual patient's needs for specialized services to treat substance withdrawal and to initiate an appropriate referral.

COMMENT #19: The lack of any staff-patient ratio requirement specifying the number of clients that the one required mental health professional may care for is a serious shortcoming of the rules. According to the proposed rules, a single licensed mental health professional could handle any number of crisis admissions since there is also no limit to the number of mental health clients that may receive services at a

OCRF at any one time.

RESPONSE: The department disagrees. Please see the department's response to Comment #10. A licensed health care professional will be on site at all times. Additional staff resources can be accessed as patient census and acuity require.

COMMENT #20: The mental health professional in proposed Rule IV(3) (37.106.1980) is required only to be knowledgeable about intoxication/addiction disorders and is not required to be qualified to address the needs or to assess signs and symptoms of substance withdrawal.

RESPONSE: The department disagrees. An OCRF is limited to a less than 24 hour service and is not intended to treat addiction disorders and/or substance withdrawal, but can refer to appropriate services. Pursuant to the changes described in the department's response to Comment #10, a licensed health care professional will be on site to assess the individual patient's needs for specialized services to treat substance withdrawal and to initiate an appropriate referral.

RULE V (37.106.1981) Outpatient Crisis Response Facility: Staffing and Operation

COMMENT #21: Proposed Rule V(8)(b) (37.106.1981), provides that a client must be medically stable to be admitted to a crisis response facility with the exception of the individual's mental illness and substance use disorder. Nowhere in the rules is the potential need for detoxification considered or the need to have a transfer agreement for the purpose of providing detoxification services to individuals needing them. The commentor believes a transfer agreement with existing detoxification programs should be required unless it is the department’s intent to permit the crisis response facility to provide detoxification. This issue needs to be clarified.

RESPONSE: The department disagrees. An OCRF is not intended to provide detoxification services to a client as the facility is time limited to less than 24 hours. An OCRF may refer a patient into an existing detoxification program, an outpatient service or to an acute care admission depending upon the patient's acuity and medical needs.

COMMENT #22: How will a determination be made that a client is medically stable and who will make that determination? The EMTALA law is clear that a determination whether or not a patient is medically stable for transfer or discharge from an emergency may only be made by ER medical personnel. It can certainly not be made by a nonphysician mental health professional working at an OCRF.

RESPONSE: The department agrees that a determination of whether or not a patient is medically stable for transfer or discharge from an ER may only be made by ER medical personnel. The proposed rules do not require discharge from an ER into a OCRF unless the ER physician feels it is an appropriate discharge. Conversely, an OCRF may initiate the transfer agreement to

emergency services.

COMMENT #23: An OCRF operated by a hospital would be a department of the hospital as described in 42 CFR 413.65. In that event, an individual brought to the OCRF would be considered to have presented to the emergency room of the hospital under the regulatory provisions of EMTALA, which defines "comes to the emergency department" to include an individual who is on hospital property located off the main hospital campus, 42 CFR 489.24(b). In that instance, an individual brought to the OCRF would immediately have to be taken to the hospital ER for medical screening and the treatment necessary to stabilize the person's medical condition before the individual could be transferred.

RESPONSE: The department partially agrees. A patient that presents to a hospital based OCRF shall be screened and stabilized as required by 42 CFR 489.24(b) and transferred to appropriate hospital services. Individuals in need of emergency intervention will be transferred to the hospital emergency room for medical screening and treatment pursuant to the required transfer agreement described in Rule V(10) (37.106.1981). However, an OCRF is not intended for emergency intervention.

COMMENT #24: Proposed Rule V(10) (37.106.1981) would require that a facility ensure that inpatient care is available through a transfer agreement for clients in need of a higher level of care. It is not clear, however, that the requirement addresses detoxification services outside of hospital settings which can and should be utilized. The commentor believes that transfer agreements should be required of an OCRF for at least acute hospitalization, crisis stabilization, transitional living resources and detoxification. Simply maintaining a "list" of agencies is inadequate.

RESPONSE: The department disagrees. The facility can utilize any of the services available to the community. The rule does require a transfer to acute service if required by a patient in crisis for either mental health issues or acute medical needs. The proposed rule does not prohibit an OCRF from transferring as appropriate to a acute care hospital, an inpatient crisis stabilization facility, transitional living resources, or other facility providing detoxification services.

COMMENT #25: Nowhere in the proposed rules is there a requirement for a medically qualified individual to make a determination regarding the medical appropriateness for this level of care. This determination must be made by a qualified medical professional.

RESPONSE: The department agrees and has amended the proposed rule as described in its response to Comment #10.

COMMENT #26: Rule V(7) (37.106.1981) staff ratio seems to need some

parameters. Programs often invest in administrative people, saving money on the nonprofessionals. All programs should establish an acuity ratio that meets with bureau approval. The ratio would vary from facility to facility because of the physical design differences, but the facility ratio should be determined from outside the program.

RESPONSE: The department disagrees. Please see the department's response to Comment #10. A licensed health care professional will be on site at all times. Additional staff resources can be accessed as patient census and acuity require. It is not possible to predict the staffing requirements as patient acuity and needs will vary on an individual basis. Facility staffing is required to meet the needs of the patients.

COMMENT #27: Rule V(10) (37.106.1981) progress notation should be completed each shift. If it is not done on each shift, it will not get done.

RESPONSE: The department agrees. Rule V(11) (37.106.1981) applies to progress notes, and will change "~~in a timely manner~~" to the words "by the end of each shift".

RULE VII (37.106.1983) Outpatient Crisis Response Facility: Clinical Records

COMMENT #28: In proposed Rule VII(2) (37.106.1983), an OCRF would be required to comply with the Uniform Health Care Information Act, Title 50, chapter 16, part 5, MCA (UHCIA). Since October 1, 2003, however, the UHCIA is no longer applicable to health care providers that are subject to the HIPAA privacy standards. If an OCRF is subject to HIPAA privacy standards, and most if not all would be, the OCRF will not fall within the jurisdiction of the UHCIA, but rather, will be covered by the HIPAA privacy standards and Title 50, chapter 16, part 8, MCA.

RESPONSE: The department agrees and will change RULE VII (37.106.1983) OUTPATIENT CRISIS RESPONSE FACILITY: CLINICAL RECORDS (2) as follows: The department will strike the term: " … in accordance with ~~Health Care Information Act, Title 50, Chapter 16, part 5, MCA"~~ and will insert the words: "… in accordance with the Health Information Portability and Accountability Act (HIPAA)."

COMMENT #29: Proposed Rule VII(2)(e) (37.106.1983), would require the patient's medical record to contain medication orders from the prescribing physician and documentation of all medication administration; however, there is no requirement in the proposed rules for qualified staff to perform these functions. Further, there are no rules regarding medication storage, pharmaceutical management, etc. There are no guidelines for what medications may be administered, including medications used in detoxification.

RESPONSE: The department partially agrees. Medication orders may only be written by a licensed physician, physician assistant within the scope of license, or an advanced practice registered nurse. Pharmaceutical management requirements are

defined by the Board of Pharmacy. The department will add the following to RULE V (37.106.1981) OUTPATIENT CRISIS RESPONSE FACILITY: STAFFING AND OPERATIONS. Insert (6) and renumber accordingly "The facility must maintain locked and secured storage for all medications kept on site."

RULE VIII (37.106.1996) Outpatient Crisis Response Facility: Client Assessments

COMMENT # 30: I do not believe the facility will be able to perform assessments as suggested within the 23 hours, 59 minutes allotted. A valid assessment cannot be conducted while a person is under the influence. If a client is drunk or high, an assessment cannot be conducted until they are no longer under the influence of chemical substances. The department should consider changing the requirements to a 72 hour model of crisis response.

RESPONSE: The department agrees. The word "assessment" was stricken from RULE II (37.106.1976) OUTPATIENT CRISIS RESPONSE FACILITY; DEFINITIONS. An OCRF is not intended to be a chemical dependency treatment facility. It is intended to provide immediate response to individuals in psychiatric crisis to stabilize and determine the appropriate service for the patient's need. The department feels that the continuum of care for longer than 23 hours and 59 minutes is already authorized by statute. A 72-hour model of crisis response is available at a licensed inpatient crisis stabilization program, a behavioral health inpatient facility, or at a hospital.

/s/ Russell E. Cater
Rule Reviewer

/s/ Russell E. Cater for
Director, Public Health and Human Services

Certified to the Secretary of State May 8, 2006.

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

In the matter of the amendment of ARM 37.111.825 pertaining to public accommodations, school health supervision and maintenance	))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On December 22, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-364 pertaining to the public hearing on the proposed amendment of the above-stated rule, at page 2555 of the 2005 Montana Administrative Register, issue number 24. On February 27, 2006, the department published MAR Notice No. 37-373 pertaining to the notice of extension of comment period on the proposed amendment of the above-stated rule at page 667 of the 2006 Montana Administrative Register, issue number 5.

2. The department has amended ARM 37.111.825 as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State May 8, 2006.

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 or Register) 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

2. Go to cross reference table at end of each Number and title which lists MCA section numbers and Department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2005. This table includes those rules adopted during the period January 1 through March 31, 2006 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 or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2005, 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 2005 and 2006 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in April 2006 appear. Vacancies scheduled to appear from June 1, 2006, through July 31, 2006, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of May 1, 2006.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM APRIL 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Air Pollution Control Advisory Council (Environmental Quality)			
Mr. Michael Barton Missoula Qualifications (if required): urban planner	Governor	Harris	4/6/2006 0/0/0
Dr. Leonard Bauer Ashland Qualifications (if required): physician	Governor	Black	4/6/2006 0/0/0
Mr. Chad Donehy Dutton Qualifications (if required): agriculture representative	Governor	Kolstad	4/6/2006 0/0/0
Dr. Linda J. Dworak Hamilton Qualifications (if required): veterinarian	Governor	not listed	4/6/2006 0/0/0
Mr. Mike Machler Billings Qualifications (if required): meterologist	Governor	not listed	4/6/2006 0/0/0
Ms. Felicity McFerrin Helena Qualifications (if required): labor representative	Governor	Noell	4/6/2006 0/0/0
Ms. Mary Jane McGarity Big Sky Qualifications (if required): chemical engineer	Governor	Lorenzen	4/6/2006 0/0/0

BOARD AND COUNCIL APPOINTEES FROM APRIL 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Air Pollution Control Advisory Council (Environmental Quality) cont.			
Mr. Mat Millenbach Billings Qualifications (if required): conservationist	Governor	Southwick	4/6/2006 0/0/0
Mr. Richard Southwick Townsend Qualifications (if required): fuel industry representative	Governor	Johnson	4/6/2006 0/0/0
Mr. Neil Turnball Brockton Qualifications (if required): Manufacturing industry representative	Governor	Leu	4/6/2006 0/0/0
Board of Athletics (Labor and Industry)			
Mr. Don Vegge Billings Qualifications (if required): public representative	Governor	reappointed	4/25/2006 4/25/2009
Board of Medical Examiners (Labor and Industry)			
Ms. Pat Bollinger Helena Qualifications (if required): nutritionist	Governor	Melick	4/29/2006 9/1/2009
Dr. Anna Earl Chester Qualifications (if required): doctor of medicine	Governor	Williams	4/29/2006 9/1/2006

BOARD AND COUNCIL APPOINTEES FROM APRIL 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Medical Examiners (Labor and Industry) cont.			
Ms. Carole Erickson	Governor	Dorr	4/29/2006
Missoula			9/1/2009
Qualifications (if required): public representative			
Ms. Sonia Gomez	Governor	McRae	4/29/2006
Billings			9/1/2009
Qualifications (if required): public representative			
Dr. Kris Spanjian	Governor	Nelson	4/29/2006
Billings			9/1/2009
Qualifications (if required): doctor of medicine			
Mr. Dwight E. Thompson	Governor	reappointed	4/29/2006
Harlowton			9/1/2009
Qualifications (if required): licensed physician assistant			
Board of Outfitters (Governor)			
Mr. Tim Linehan	Governor	Montgomery	4/1/2006
Troy			10/1/2008
Qualifications (if required): big game outfitter			
Commission on Practice of the Supreme Court (Supreme Court)			
Mr. Gary Davis	elected	not listed	4/1/2006
Helena			4/1/2010
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM APRIL 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Horse Racing Task Force (Governor)			
Mr. Joe Birdrattler Browning Qualifications (if required): public representative	Governor	not listed	4/19/2006 12/31/2006
Mr. Ben Carlson Billings Qualifications (if required): public representative	Governor	not listed	4/19/2006 12/31/2006
Sen. Dale Mahlum Missoula Qualifications (if required): public representative	Governor	not listed	4/19/2006 12/31/2006
Ms. Sherry Meador Clancy Qualifications (if required): public representative	Governor	not listed	4/19/2006 12/31/2006
Mr. Shawn Real Bird Crow Agency Qualifications (if required): public representative	Governor	not listed	4/19/2006 12/31/2006
Mr. Bill Schmitt Great Falls Qualifications (if required): public representative	Governor	not listed	4/19/2006 12/31/2006
Mr. Ron Thiebert Kalispell Qualifications (if required): public representative	Governor	not listed	4/19/2006 12/31/2006

BOARD AND COUNCIL APPOINTEES FROM APRIL 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Horse Racing Task Force (Governor)			
Mr. John Tooke	Governor	not listed	4/19/2006
Miles City			12/31/2006
Qualifications (if required): public representative			
Independent Living Council (Public Health and Human Services)			
Mr. Bob Maffit	Governor	not listed	4/29/2006
Helena			12/1/2006
Qualifications (if required): Independent Living Center representative			
Montana Wheat and Barley Committee (Agriculture)			
Mr. Don H. Chaffee	Governor	Candee	4/24/2006
Wibaux			8/20/2008
Qualifications (if required): resident of District 7			
Montana-Canadian Provinces Relations Advisory Council (Commerce)			
Lt. Governor John Bohlinger	Governor	not listed	4/6/2006
Helena			4/6/2008
Qualifications (if required): Lieutenant Governor			
Rep. Hal Jacobson	Governor	not listed	4/6/2006
Helena			4/6/2008
Qualifications (if required): Legislative representative			
Sen. Sam Kitzenberg	Governor	not listed	4/6/2006
Glasgow			4/6/2008
Qualifications (if required): Legislative representative			

BOARD AND COUNCIL APPOINTEES FROM APRIL 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana-Canadian Provinces Relations Advisory Council (Commerce) cont.			
Rep. John L. Musgrove	Governor	not listed	4/6/2006
Havre			4/6/2008
Qualifications (if required): Legislative representative			
Sen. Trudi Schmidt	Governor	not listed	4/6/2006
Great Falls			4/6/2008
Qualifications (if required): Legislative representative			
Rep. Wayne Stahl	Governor	not listed	4/6/2006
Saco			4/6/2008
Qualifications (if required): Legislative representative			
Public Employees' Retirement Board (Administration)			
Ms. Elizabeth Nedrow	Governor	Kasten	4/11/2006
Billings			4/1/2011
Qualifications (if required): public representative			
Water Pollution Control Advisory Council (Environmental Quality)			
Mr. Jon Bengochea	Governor	Butler	4/11/2006
Glasgow			0/0/0
Qualifications (if required): public works director			
Dr. Debra Bucklin Sanchez	Governor	Schwarz	4/11/2006
Helena			0/0/0
Qualifications (if required): engineer with sanitary engineering experience			

BOARD AND COUNCIL APPOINTEES FROM APRIL 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Water Pollution Control Advisory Council (Environmental Quality) cont.			
Mr. Matt Clifford Missoula Qualifications (if required): conservation organization representative	Governor	Wilson	4/11/2006 0/0/0
Mr. Terry McLaughlin Missoula Qualifications (if required): representative of industry concerned with the disposal of organic waste	Governor	reappointed	4/11/2006 0/0/0
Mr. Roger Muggli Miles City Qualifications (if required): representative of irrigated agriculture	Governor	Griffin	4/11/2006 0/0/0
Ms. Stevie Neuman Vaughn Qualifications (if required): representative of a soil and water conservation district	Governor	Willems	4/11/2006 0/0/0
Mr. Earl Salley Great Falls Qualifications (if required): representative of industry concerned with the disposal of inorganic waste	Governor	Dunlap	4/11/2006 0/0/0
Mr. Donald Skaar Helena Qualifications (if required): fisheries biologist	Governor	reappointed	4/11/2006 0/0/0
Mr. Dudley L. Tyler Livingston Qualifications (if required): realtor/developer representative	Governor	Trenk	4/11/2006 0/0/0

BOARD AND COUNCIL APPOINTEES FROM APRIL 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Water Pollution Control Advisory Council (Environmental Quality) cont.			
Mr. Michael Wendland Rudyard Qualifications (if required): representative of production agriculture	Governor	Seilstad	4/11/2006 0/0/0
Ms. Kathleen Williams Helena Qualifications (if required): public representative	Governor	Lorenzen	4/11/2006 0/0/0

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2006 through AUGUST 31, 2006

Board/current position holder	Appointed by	Term end
Aging Advisory Council (Public Health and Human Services)		
Ms. Eloise England, Heart Butte Qualifications (if required): public member	Governor	7/18/2006
Ms. Wesleta Branstetter, Billings Qualifications (if required): public member	Governor	7/18/2006
Mr. George Erickson, Great Falls Qualifications (if required): public member	Governor	7/18/2006
Board of Banking (Administration)		
Mr. Jon Redlin, Lambert Qualifications (if required): state bank officer of a large size bank	Governor	7/1/2006
Board of Landscape Architects (Labor and Industry)		
Mr. Robert Broughton, Victor Qualifications (if required): licensed landscape architect	Governor	7/1/2006
Board of Nursing (Labor and Industry)		
Rev. Steven Rice, Miles City Qualifications (if required): public member	Governor	7/1/2006
Ms. Jeanine Thomas, Ronan Qualifications (if required): licensed practical nurse	Governor	7/1/2006
Ms. Lorena Erickson, Corvallis Qualifications (if required): public member	Governor	7/1/2006

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2006 through AUGUST 31, 2006

Board/current position holder	Appointed by	Term end
Board of Nursing (Labor and Industry) cont.		
Ms. Karen Pollington, Havre	Governor	7/1/2006
Qualifications (if required): registered professional nurse		
Board of Pharmacy (Labor and Industry)		
Mr. William D. Burton, Helena	Governor	7/1/2006
Qualifications (if required): licensed pharmacist		
Board of Physical Therapy Examiners (Labor and Industry)		
Ms. Brenda T. Mahlum, Missoula	Governor	7/1/2006
Qualifications (if required): physical therapist		
Ms. Judy Cole, Forsyth	Governor	7/1/2006
Qualifications (if required): public member		
Dr. Paul Melvin, Helena	Governor	7/1/2006
Qualifications (if required): physician		
Board of Private Security Patrol Officers and Investigators (Labor and Industry)		
Sheriff Ronald Rowton, Lewistown	Governor	8/1/2006
Qualifications (if required): representative of a county sheriff's department		
Ms. Linda Sanem, Bozeman	Governor	8/1/2006
Qualifications (if required): private investigator		
Ms. Mori Woods, Columbus	Governor	8/1/2006
Qualifications (if required): representative of a city police department		

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2006 through AUGUST 31, 2006

Board/current position holder	Appointed by	Term end
Board of Professional Engineers and Professional Land Surveyors (Labor and Industry)		
Ms. Janet Markle, Glasgow Qualifications (if required): public member	Governor	7/1/2006
Mr. Steve Wright, Columbia Falls Qualifications (if required): professional engineer	Governor	7/1/2006
Mr. Denis Applebury, Victor Qualifications (if required): professional surveyor	Governor	7/1/2006
Board of Public Accountants (Labor and Industry)		
Mr. Wayne Hoffman, Billings Qualifications (if required): licensed public accountant	Governor	7/1/2006
Mr. Gary Kasper, Fairfield Qualifications (if required): licensed public accountant	Governor	7/1/2006
Board of Radiologic Technologists (Labor and Industry)		
Mr. Thomas A. Carter, Shelby Qualifications (if required): radiologic technologist	Governor	7/1/2006
Ms. Anne Delaney, Missoula Qualifications (if required): radiologic technologist	Governor	7/1/2006
Board of Research and Commercialization Technology (Governor)		
Mr. Michael Dolson, Hot Springs Qualifications (if required): Native American	Governor	7/1/2006

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2006 through AUGUST 31, 2006

Board/current position holder	Appointed by	Term end
Board of Sanitarians (Board of Sanitarians)		
Ms. Denise Moldroski, Livingston Qualifications (if required): registered sanitarian	Governor	7/1/2006
Board of Veterans' Affairs (Military Affairs)		
Mr. Donald Bogut, Kalispell Qualifications (if required): veteran	Governor	8/1/2006
Board of Veterinary Medicine (Commerce)		
Dr. Jack Newman, Great Falls Qualifications (if required): licensed veterinarian	Governor	7/31/2006
Board of Water Well Contractors (Natural Resources and Conservation)		
Mr. Kevin Haggerty, Bozeman Qualifications (if required): water well contractor	Governor	7/1/2006
Commission on Community Service (Labor and Industry)		
Ms. Nancy Coopersmith, Helena Qualifications (if required): representative of K-12 education	Governor	7/1/2006
Mr. George Dennison, Missoula Qualifications (if required): representative of higher education	Governor	7/1/2006
Lt. Col. John Walsh, Helena Qualifications (if required): representative of Military Affairs	Governor	7/1/2006
Mr. Donald Kettner, Glendive Qualifications (if required): representative of private citizens	Governor	7/1/2006

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2006 through AUGUST 31, 2006

Board/current position holder	Appointed by	Term end
Committee on Telecommunications Access Services (Public Health and Human Services)		
Ms. Lynn Harris, Missoula Qualifications (if required): audiologist	Governor	7/1/2006
Mr. David Davis, Great Falls Qualifications (if required): non-disabled senior citizen	Governor	7/1/2006
Ms. Christy Keto, Havre Qualifications (if required): representative of an interLATA interexchange carrier	Governor	7/1/2006
Community Service Commission (Labor and Industry)		
Mr. John Ilgenfritz, Helena Qualifications (if required): representative of disaster and emergency services	Governor	7/1/2006
Economic Development Advisory Council (Commerce)		
Mr. Steve Holland, Bozeman Qualifications (if required): public member	Governor	7/23/2006
Mr. Jim Atchison, Colstrip Qualifications (if required): public member	Governor	7/23/2006
Ms. Erin Lutts, Glendive Qualifications (if required): public member	Governor	7/23/2006
Ms. Elizabeth Harris, Whitefish Qualifications (if required): public representative	Governor	7/23/2006

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2006 through AUGUST 31, 2006

Board/current position holder	Appointed by	Term end
Family Education Savings Oversight Committee (Commissioner of Higher Education)		
Mr. Frank D'Angelo, Missoula Qualifications (if required): public member	Governor	7/1/2006
Information Technology Managers Council (Administration)		
Mr. Mike Boyer, Glasgow Qualifications (if required): none specified	Director	7/1/2006
Mr. Barney Benkelman, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. David Nagel, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Hank Trenk, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Karen Hruska, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Kathy James, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Homer Young, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Dulcy Hubbert, Helena Qualifications (if required): none specified	Director	7/1/2006

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2006 through AUGUST 31, 2006

Board/current position holder	Appointed by	Term end
Information Technology Managers Council (Administration) cont.		
Mr. Bob Morris, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Mike Jacobson, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Ken Kops, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Dan Chelini, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Edwina Dale, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Steve Tesinsky, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Paul Gilbert, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Mark Sheehan, Qualifications (if required): none specified	Director	7/1/2006
Mr. Dan Forbes, Helena Qualifications (if required): none specified	Director	7/1/2006

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2006 through AUGUST 31, 2006

Board/current position holder	Appointed by	Term end
Information Technology Managers Council (Administration) cont.		
Mr. Dick Clark, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Robin Trenbeath, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. John Daugherty, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Mike Walsh, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Damon Murdo, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Karen Nelson, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Aaron Mook, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Kristin Han, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Jack Zanto, Helena Qualifications (if required): none specified	Director	7/1/2006

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2006 through AUGUST 31, 2006

Board/current position holder	Appointed by	Term end
Information Technology Managers Council (Administration) cont.		
Mr. David de Gil, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Margaret Kauska, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. James Thomas, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Stacy Ripple, Helena Qualifications (if required): none specified	Director	7/1/2006
Montana Historical Society Board of Trustees (Historical Society)		
Mr. Robert Morgan, Clancy Qualifications (if required): public member	Governor	7/1/2006
Mr. Larry McRae, Missoula Qualifications (if required): public member	Governor	7/1/2006
Ms. Judy Cole, Forsyth Qualifications (if required): public member	Governor	7/1/2006
Montana Mint Committee (Agriculture)		
Mr. Ken Smith, Kalispell Qualifications (if required): mint grower	Governor	7/1/2006

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2006 through AUGUST 31, 2006

Board/current position holder	Appointed by	Term end
Montana Mint Committee (Agriculture) cont.		
Mr. Charlie Jaquette, Kalispell	Governor	7/1/2006
Qualifications (if required): mint grower		
Montana Public Safety Communications Council (Administration)		
Commissioner Kathy Bessette, Havre	Governor	6/14/2006
Qualifications (if required): local government representative		
Mr. Chuck Lee, Baker	Governor	6/14/2006
Qualifications (if required): representative of the 9-1-1 community		
Montana Wheat and Barley Committee (Agriculture)		
Mr. Dan DeBuff, Shawmut	Governor	8/20/2006
Qualifications (if required): representative of District V and a Republican		
Mr. Brian Kaae, Dagmar	Governor	8/20/2006
Qualifications (if required): representative of District I and a Democrat		
Ms. Karen Schott, Broadview	Governor	8/20/2006
Qualifications (if required): representative of District VI and a Democrat		
Petroleum Tank Release Compensation Board (Environmental Quality)		
Mr. Frank Schumacher, Great Falls	Governor	6/30/2006
Qualifications (if required): service station dealer		
Postsecondary Scholarship Advisory Council (Higher Education)		
Mr. LeRoy Schramm, Helena	Governor	6/20/2006
Qualifications (if required): having experience in postsecondary education		

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2006 through AUGUST 31, 2006

Board/current position holder	Appointed by	Term end
Public Defender Commission (Administration)		
Mr. Doug Kaercher, Havre	Governor	7/1/2006
Qualifications (if required): public representative nominated by the Senate President		
Mr. Stephen Nardi, Kalispell	Governor	7/1/2006
Qualifications (if required): attorney nominated by the Montana State Bar		
Ms. Theda New Breast, Babb	Governor	7/1/2006
Qualifications (if required): member of an organization advocating on behalf of racial minorities		
State Banking Board (Administration)		
Mr. Russ Ritter, Helena	Governor	7/1/2006
Qualifications (if required): public member		
State Electrical Board (Commerce)		
Mr. Tony Martel, Bozeman	Governor	7/1/2006
Qualifications (if required): public member		
State-Tribal Economic Development Commission (Governor)		
Ms. Caroline Brown, Harlem	Governor	6/30/2006
Qualifications (if required): representative of the Fort Belknap Tribe		
State-Tribal Economic Development Commission (Indian Affairs)		
Mr. Shawn Real Bird, Crow Agency	Governor	6/30/2006
Qualifications (if required): representative of the Crow Tribe		

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2006 through AUGUST 31, 2006

Board/current position holder	Appointed by	Term end
Teachers' Retirement Board (Administration)		
Ms. Mona Bilden, Miles City	Governor	7/1/2006
Qualifications (if required): teacher who is active in the retirement system		
Mr. Darrell Layman, Glendive	Governor	7/1/2006
Qualifications (if required): retired teacher		
Telecommunications Access Services (Public Health and Human Services)		
Mr. Eric Eck, Helena	Governor	7/1/2006
Qualifications (if required): representative of the Montana Public Service Commission		
Tourism Advisory Council (Commerce)		
Mr. Clark Whitehead, Lewistown	Governor	7/1/2006
Qualifications (if required): representative of Russell Country and a federal agency		
Mr. Richard J. Young, Brockton	Governor	7/1/2006
Qualifications (if required): representative of Missouri River Country and Tribal Government		
Ms. Mary Ellen Schnur, Townsend	Governor	7/1/2006
Qualifications (if required): representative of Gold West Country		
Mr. Mark Browning, Miles City	Governor	7/1/2006
Qualifications (if required): representative of Custer Country		
Mr. Michael Morrison, Great Falls	Governor	7/1/2006
Qualifications (if required): representing Russell Country		

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2006 through AUGUST 31, 2006

Board/current position holder	Appointed by	Term end
Tourism Advisory Council (Commerce) cont.		
Ms. Dyani Bingham, Billings	Governor	7/1/2006
Qualifications (if required): public member from Custer Country		
Western Interstate Commission for Higher Education (Commissioner of Higher Education)		
Rep. Cindy Younkin, Bozeman	Governor	6/19/2006
Qualifications (if required): legislator		