ISSUE NO. 16

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 print 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 Services, at (406) 444-2055.

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NOTICE SECTION

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.38.101, 17.38.201A, 17.38.202, 17.38.203, 17.38.204, 17.38.208, 17.38.209, 17.38.216, 17.38.225, 17.38.234, and 17.38.239, pertaining to incorporation by reference of current federal regulations and other materials in the public water supply rules, and the adoption of New Rule I pertaining to consecutive system coverage	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION (PUBLIC WATER SUPPLY)

TO: All Concerned Persons

1. On September 17, 2008, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption 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 Elois Johnson no later than 5:00 p.m., September 2, 2008, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson, Paralegal, at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) and (2) remain the same.

(3) As used in this rule, the following definitions apply in addition to those in 75-6-102, MCA:

(a) "Accessory building" means a subordinate building or structure on the same lot as the main building, which is under the same ownership as the main building, and which is devoted exclusively to an accessory use such as a garage, workshop, art studio, guest house, or church rectory.

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

~~(b)~~ (c) "Main" means any line providing water or sewer to multiple service connections, any line serving a water hydrant that is designed for fire fighting purposes, and any line that is designed to water or sewer main specifications;

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

~~(d)~~ (e) "Service connection" means a line that provides water or sewer service to ~~one building or living unit~~ a single building or main building with accessory

buildings, and that is designed to service line specifications;

(e) through (j)(ii) remain the same, but are renumbered (f) through (k)(ii).

(4) through (17) remain the same.

AUTH: 75-6-103, MCA
IMP: 75-6-103, 75-6-112, 75-6-121, MCA

REASON: The proposed amendments to ARM 17.38.101(3)(a) and (e) clarify the "service connection" definition and add a new definition for "accessory building." The department allows certain accessory buildings to be placed on a service line without the need to upgrade the line to meet the more extensive design requirements for mains. The current definition could be read as precluding use of accessory buildings. The proposed amendments are necessary to clarify which additional buildings may be connected to a service line.

The proposed amendment to ARM 17.38.101(3)(c) clarifies the "main" definition. This amendment is necessary to close a loophole that existed between the Unified Plumbing Code and Department Circular DEQ-1. Any line serving a water hydrant designed for fire fighting must be designed and constructed to the water main specifications. The amendment also provides that any line designed to main specifications constitutes a main. This is necessary to ensure that lines that exceed specifications for service lines (e.g., diameter) comply with all the requirements applicable to mains, even if the line does not serve multiple service connections.

17.38.201A INCORPORATION BY REFERENCE--PUBLICATION DATES AND AVAILABILITY OF REFERENCED DOCUMENTS (1) Unless expressly provided otherwise, in this subchapter where the board has:

(a) adopted and incorporated by reference a federal regulation, the reference is to the July 1, ~~2003~~ 2007, edition of the Code of Federal Regulations (CFR);

~~(b) referred to a section of the Montana Code Annotated (MCA), the reference is to the 2003 edition of the MCA.~~

~~(c) adopted a federal regulation and incorporated it by reference into this subchapter as modified by this subchapter, a reference to the federal regulation is to the regulation as modified by this subchapter~~.

(2) through (4) remain the same.

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

REASON: The proposed amendment to ARM 17.38.201A(1)(a) incorporates by reference the most recent applicable sections of the Code of Federal Regulations (CFR). The amendment will update the incorporation from the 2003 CFR to the 2007 CFR. These proposed amendments are necessary to allow the department to retain primacy for enforcement of safe drinking water laws. The policy of the Montana Legislature has been for state agencies to retain primacy over environmental and public health programs. The substantive changes to the CFR that occurred between 2003 and 2007 are summarized below in the Reason for the

proposed amendments to ARM 17.38.239.

The proposed deletion of ARM 17.38.201A(1)(b) removes an unnecessary reference to the Montana Code Annotated, 2003 edition. As the statutes are self-implementing, the adoption of a specific edition is erroneous.

ARM 17.38.201A(1)(c) is proposed for deletion because it is unnecessary.

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

(1) and (2) remain the same.

(3) "Ground water under the direct influence of surface water (GWUDISW)" has the same meaning as adopted and incorporated by reference from 40 CFR 141.2, except that GWUDISW determinations for regulatory compliance purposes are made in accordance with the Department of Environmental Quality Circular PWS-5, Ground Water Under the Direct Influence of Surface Water, ~~2002 edition,~~ as adopted and incorporated by reference in ARM 17.38.209.

(4) through (6) remain the same.

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

REASON: The proposed amendment to ARM 17.38.202(3) is necessary to remove repetitive language. The edition of the applicable Circular is identified in ARM 17.38.209 where the board adopts Department Circular PWS-5 by reference.

17.38.203 MAXIMUM INORGANIC CHEMICAL CONTAMINANT LEVELS

(1) The board adopts and incorporates by reference:

(a) through (c) remain the same.

(d) 40 CFR 141.80(c)~~(1) and 40 CFR 141.80(c)(2)~~, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth the action levels for lead and copper.

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

REASON: The proposed amendments to ARM 17.38.203(1)(d) adopt new federal requirements for lead and copper that are in effect but are not codified in the 2007 Code of Federal Regulations. The statements of reasonable necessity for substantive new or modified federal requirements are consolidated at the end of this notice in the Reason section for ARM 17.38.239.

17.38.204 MAXIMUM ORGANIC CHEMICAL CONTAMINANT LEVELS

(1) The board ~~hereby~~ adopts and incorporates by reference 40 CFR ~~141.12,~~ 141.61(a), 141.61(c), 141.64(a)(1), ~~and~~ 141.64(b)(1)(i), and 141.64(b)(2)(i), which set forth maximum contaminant levels for synthetic organic contaminants, volatile organic contaminants, and disinfection byproducts.

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

REASON: The proposed amendments to ARM 17.38.204 correct a typographical error and remove a reference to section 141.12, which has been deleted in the federal rule and replaced by 141.64. The change in the federal requirements codifies the old requirements in the new section. Because of renumbering of the federal rules, section 141.64(a) and (b) now address both contaminant levels and treatment requirements. Because ARM 17.38.204 addresses only contaminant levels, the references to section 141.64 in this rule are proposed to be amended to refer only to the federal provisions relating to contaminant levels. The provisions in section 141.64 relating to treatment requirements will be incorporated by the proposed amendments to ARM 17.38.208(4)(e). The statements of reasonable necessity for substantive new or modified federal requirements are consolidated at the end of this notice in the Reason for ARM 17.38.239.

17.38.208 TREATMENT REQUIREMENTS (1) The board ~~hereby~~ adopts and incorporates by reference 40 CFR 141.70, which sets forth general surface water treatment requirements, with the following changes:

(a) through (c) remain the same.

(2) The board ~~hereby~~ adopts and incorporates by reference 40 CFR 141.71, which sets forth requirements for avoiding filtration, except for the following changes:

(a) through (e) remain the same.

(3) The board ~~hereby~~ adopts and incorporates by reference 40 CFR 141.72, which sets forth treatment requirements for public water suppliers that use filtered surface water, except that the terms "undetectable" and "not detected" in 40 CFR 141.72(a)(4)(i) and 141.72(b)(3)(i) are replaced by the phrase "less than 0.2 mg/l by the DPD method or 0.1 mg/l by the amperometric titration method."

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

(a) through (d) remain the same.

(e) 40 CFR 141.64~~(c)~~(a)(2), 141.64(b)(1)(ii), 141.64(b)(2)(ii), and 141.64(b)(2)(iii), which set~~s~~ forth BATs for disinfection byproducts;

(f) and (g) remain the same.

(h) 40 CFR 141.81, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth the applicability of lead and copper corrosion control treatment steps to small, medium, and large water systems;

(i) remains the same.

(j) 40 CFR 141.83, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth lead and copper source water treatment requirements;

(k) 40 CFR 141.84, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth lead service line replacement requirements;

(l) through (w) remain the same.

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

REASON: The proposed amendments to ARM 17.38.208(4)(e) conform the CFR references to renumbering within the federal rule and adopt new federal requirements.

The proposed amendments to ARM 17.38.208(4)(h), (j), and (k) adopt new or modified federal requirements for lead and copper. The statements of reasonable necessity for substantive new or modified federal requirements are consolidated at the end of this notice in the Reason for ARM 17.38.239.

17.38.209 GROUND WATER UNDER THE DIRECT INFLUENCE OF SURFACE WATER DETERMINATIONS (1) The board ~~hereby~~ adopts and incorporates by reference the Department of Environmental Quality Circular PWS-5, Ground Water Under the Direct Influence of Surface Water, ~~2002~~ 2008 edition, which sets forth the standards for making ground water under the direct influence of surface water determinations.

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

REASON: The proposed amendment to ARM 17.38.209 adopts the newest edition of DEQ Circular PWS-5, which sets forth the standards for making ground water under the direct influence of surface water determinations. The proposed amendments to DEQ Circular PWS-5 are necessary to clarify those requirements so as to address comments received by the department from the regulated community. The proposed changes clarify that the preliminary assessment is only an assessment and not a final decision by the department, that the department may utilize any and all of the test methods to make a determination, and that the determination may be changed at any time given new information. The proposed changes to DEQ Circular PWS-5 may be viewed on the department web site at http://www.deq.mt.gov/wqinfo/Circulars.asp.

17.38.216 CHEMICAL AND RADIOLOGICAL QUALITY SAMPLES

(1) and (2) remain the same.

(3) The board adopts and incorporates by reference the following monitoring and analytical requirements:

(a) through (g) remain the same.

~~(h) 40 CFR 141.30, which sets forth sampling and analytical method requirements for total trihalomethanes;~~

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

~~(l)~~ (k) 40 CFR 141.80, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth general requirements for the control of lead and copper;

~~(m)~~ (l) 40 CFR 141.86, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth sampling and analytical method requirements for lead and copper;

~~(n)~~ (m) 40 CFR 141.87, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth sampling requirements for water quality parameters;

~~(o)~~ (n) 40 CFR 141.88, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth sampling requirements for lead and copper in source water;

~~(p)~~ (o) 40 CFR 141.89, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth analytical method requirements for lead, copper, and water quality parameters;

~~(q)~~ (p) 40 CFR 141.130, which~~, in addition to 40 CFR 141.30,~~ sets forth general requirements for control of disinfectants and disinfection byproducts;

~~(r)~~ (q) 40 CFR 141.131, which~~, in addition to 40 CFR 141.30,~~ sets forth analytical method requirements for disinfectants and disinfection byproducts;

~~(s)~~ (r) 40 CFR 141.132, which~~, in addition to 40 CFR 141.30,~~ sets forth sampling requirements for disinfectants and disinfection byproducts; and

~~(t)~~ (s) 40 CFR 141.133, which~~, in addition to 40 CFR 141.30,~~ sets forth compliance requirements for disinfectants and disinfection byproducts.

~~(4) A public water supply system which exclusively purchases water from another public water supply system is considered an extension of the original public water supply system and is not required to perform chemical or radiological analyses to determine compliance with maximum contaminant levels unless specifically required by the department due to known or potential problems.~~

(5) and (6) remain the same, but are renumbered (4) and (5).

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

REASON: The proposed amendments to ARM 17.38.216 delete outdated references and adopt new federal language. The proposed amendment to (4) moves the requirements for consecutive systems to proposed New Rule I. The statements of reasonable necessity for substantive new or modified federal requirements are consolidated at the end of this notice in the Reason for ARM 17.38.239.

17.38.225 CONTROL TESTS (1) remains the same.

(2) At least two chlorine residual tests must be conducted daily, one at ~~the point of application~~ each entry point and one in the distribution system:

(a) by a supplier of a public water supply system employing full time chlorination of a groundwater source. The frequency of chlorine residual monitoring may be reduced by the department for noncommunity groundwater water systems on a case-by-case basis; ~~and~~

(b) by a supplier of a public water supply system using a surface water source, who also shall comply with the other requirements in this subchapter for chlorine residual monitoring for surface water supplies~~.~~ ; and

(c) by a consecutive system that receives chlorinated water from its wholesaler. For consecutive systems, the entry point is the point at which the purchased water enters the distribution system of the consecutive system.

(3) remains the same.

(4) Only the following analytical methods or other methods approved by the department~~,~~ may be used to demonstrate compliance with the requirements of this rule:

(a) Turbidity measurements must be taken as set forth in 40 CFR 141.74. Secondary turbidity standards may be used for daily calibration of turbidimeters if those standards are calibrated against an EPA-approved primary at least quarterly. Documentation of the date, analyst performing the procedure, procedures used, and results of the quarterly calibration checks must be maintained by the water system and reported to the department within ~~10~~ ten days following the end of the month during which this procedure took place.

(b) through (7) remain the same.

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

REASON: The proposed addition of ARM 17.38.225(2)(c) clarifies that consecutive systems must maintain and monitor chlorine residuals when they, or their wholesaler, are required to chlorinate. The need for maintaining a residual is not diminished by the sale of water from a wholesaler to a consecutive system.

17.38.234 TESTING AND SAMPLING RECORDS AND REPORTING REQUIREMENTS (1) through (5) remain the same.

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

(a) and (b) remain the same.

(c) 40 CFR 141.35~~(a), 141.35(b) and 141.35(c)~~, which sets forth reporting requirements for unregulated chemicals;

(d) through (e) remain the same.

(f) 40 CFR 141.90 and 141.91, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which set~~s~~ forth reporting and recordkeeping requirements for lead and copper;

(g) through (9) remain the same.

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

REASON: The proposed amendments to ARM 17.38.234 delete outdated references and adopt new federal language. The statements of reasonable necessity for substantive new or modified federal requirements are consolidated at the end of this notice in the Reason for ARM 17.38.239.

17.38.239 PUBLIC NOTIFICATION FOR COMMUNITY AND NONCOMMUNITY SUPPLIES (1) The board ~~hereby~~ adopts and incorporates by reference 40 CFR Part 141, subpart Q, which sets forth public notification requirements for drinking water violations.

(2) The board ~~hereby~~ adopts and incorporates by reference 40 CFR Part 141, Subpart O, which sets forth requirements for consumer confidence reports.

(3) The board adopts and incorporates by reference 40 CFR Part 141.85, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth the public education and supplemental monitoring requirements for exceedances of the lead action level.

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

REASON: The proposed amendment to ARM 17.38.239(3) is to adopt the lead education requirements into the public notice section of the ARM. The proposed amendment is necessary to clarify that the requirement is properly listed in the public notification section of the ARM.

CFR INCORPORATION

As a primacy state, Montana is required to have laws and rules at least as stringent as the federal rules regulating public water supplies. Therefore, in 2000, the department changed its rules to adopt and incorporate by reference the public water supply requirements as defined in 40 CFR (1999 Edition), Part 141. Because the public water supply requirements are constantly changing and the department must be at least as stringent as the federal requirements in order to maintain primacy, the department modified its rules in 2002 to adopt the 2001 Edition and then in 2004 to adopt the 2003 Edition. In this proposed rule notice, the department is requesting that the board update the rules to adopt and incorporate by reference the 2007 Edition of the CFRs.

These proposed amendments are necessary to allow the department to enforce the public water supply laws and to retain primacy for enforcement of safe drinking water laws. The policy of the Montana Legislature has been for state agencies to retain primacy over environmental and public health programs.

The 2007 Edition of the CFR does not contain the Lead and Copper Rule Short-Term Revisions (LCRSTR). The LCRSTR were promulgated after publication of the 2007 Edition. Consequently, for Subpart I. Control of Lead and Copper, the department proposes to adopt the 2007 CFR as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007). The revisions are necessary to clarify monitoring requirements, waiver requirements, and increase public notification.

Although the department is not currently proposing to adopt the new federal Long-Term 2 Surface Water Rule (LT2), Stage 2 Disinfectant/Disinfection-by-Products Rule (Stage 2), or the Ground Water Rule (GWR), some portions of those requirements are being adopted by reference as part of other sections that the department needs to adopt to implement its current program. It is impractical to avoid incorporation of portions of the new requirements, because they are so closely codified with provisions that the department needs to implement. Because the department does not yet have primacy to implement the new federal requirements, incorporation of portions of the new federal provisions will not have a substantive effect.

Following is a summary of the significant changes between the 2003 and 2007 editions of the CFR:

Subpart A. General

§ 141.2. Definitions. Sixteen new or modified terms were added to this section.

Subpart B. Maximum Contaminant Levels (MCL)

§ 141.12. Maximum contaminant levels for total trihalomethanes. This section has been deleted and moved to §141.64.

Subpart C. Monitoring and Analytical Requirements

§ 141.23. Inorganic chemical sampling and analytical requirements. New requirements add new source or system timeframes, provide clarification for failure to collect all quarterly samples, add arsenic and asbestos to the Running Annual Average (RAA), and clarify RAA calculations for failure to collect required confirmation samples.

§ 141.24. Organic chemicals sampling and analytical requirements. This section clarifies that the MCL determinations are based on quarters, adopts new source/system requirements, and clarifies monitoring requirements and the detection and acceptance tables.

§ 141.26. Monitoring frequency and compliance requirements for radionuclides in community water systems. This section clarifies provisions for reduced monitoring.

Subpart D. Reporting and Recordkeeping

§ 141.33. Record maintenance. This section provides clarification and new requirements for maintaining monitoring plans.

§ 141.35. Reporting for unregulated contaminant monitoring results. This section clarifies reporting requirements.

Subpart E. Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use

§ 141.40. Monitoring requirements for unregulated contaminants. This section clarifies unregulated contaminant monitoring requirements, applicability provisions, and a table.

Subpart I. Control of Lead and Copper, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)

§ 141.80. General requirements. This section clarifies the "90th percentile" calculation for systems collecting fewer than five samples and requires that notification of lead results be given to the sample sites.

§ 141.81. Applicability of corrosion control treatment steps to small, medium-size, and large water systems. This section requires state approval before any long-term treatment change or new source is added to a system and clarifies the begin date for required actions.

§ 141.83. Source water treatment requirements. This section provides clarification of begin dates and time frames for required actions.

§ 141.84. Lead service line replacement requirements. This section provides clarification of begin dates and time-frames for required actions.

§ 141.85. Public education and supplemental monitoring requirements. This section clarifies the public education requirements.

§ 141.86. Monitoring requirements for lead and copper in tap water. This section allows for fewer than five samples, clarifies the sampling table, clarifies when

a system must begin reduced monitoring and the minimum number of samples, clarifies timing and reduction for optimized water quality parameters (WQP) with written state approval, clarifies the timing and requirements for reducing to one sample every three years (sample every third calendar year), clarifies alternate schedules and timing, clarifies the timing and requirements for loss of reduced monitoring, requires the system to notify the state, in writing, of any long-term change in treatment or installation of a new source, requires the state to review and preapprove changes, requires waivers to be renewed every ninth calendar year, and clarifies provisions regarding review of new sources or changes in treatment for systems with a waiver.

§ 141.87. Monitoring requirements for water quality parameters. This section clarifies a table, clarifies requirements and timing for increased collection of WQPs following exceedance, clarifies timing for reduced WQPs for optimized systems, and clarifies that systems on reduced three-year monitoring must collect and submit a sample once every three calendar years.

§ 141.88. Monitoring requirements for lead and copper in source water. This section clarifies the timing for source Pb and Cu samples after exceedance and clarifies provisions requiring one sample every third calendar year.

§ 141.90. Reporting requirements. This section clarifies timing, requires prior state review and approval of new long-term treatment or a new source, clarifies provisions regarding submission to the state of written documentation for the lead service line material evaluation, and requires systems to submit certification of lead-result consumer notification and timing.

Subpart L. Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors

§ 141.131. Analytical requirements. This section clarifies methods, a table, acceptance limits, and maximum residual levels.

§ 141.132. Monitoring requirements. This section clarifies timelines and requirements for reduced monitoring.

Subpart O. Consumer Confidence Reports

§ 141.153. Content of the reports. This section clarifies reporting levels for RAAs and disinfection byproducts (DBPs), clarifies average and range reporting, and clarifies a new reporting requirement for the Ground Water Rule (GWR), which is currently not adopted.

§ 141.154. Required additional health information. This section clarifies when lead education must be given and clarifies its content.

Subpart Q. Public Notification of Drinking Water Violations

§ 141.202. Tier 1 Public notice - Form, manner, and frequency of notice. This section provides new requirements for GWR, which is currently not adopted.

§ 141.203. Tier 2 Public notice - Form, manner, and frequency of notice. This section provides new requirements for GWR, which is currently not adopted.

Appendix A. National primary drinking water regulations - Violations and other situations requiring public notice. Appendix A provides new requirements for Long-term 2, which is currently not adopted, new requirements for GWR, which is currently not adopted, adds a uranium requirement, and clarifies provisions regarding DBPs.

Appendix B. Standard health effects language for public notification.

Appendix B adds GWR language, which is currently not adopted, and adds uranium language.

4. The proposed new rule provides as follows:

NEW RULE I CONSECUTIVE SYSTEM COVERAGE (1) As provided in this rule, a consecutive system that meets all of the conditions in (1)(a) through (e) may be excluded from the requirements of the National Primary Drinking Water Regulations, as described in 40 CFR Part 141. A consecutive system that is granted an exclusion under this rule is not excluded from any requirements, additional to those in 40 CFR Part 141, which are applicable to the system under Title 75, chapter 6, MCA, or rules adopted thereunder. In order to be considered for the exclusion, a consecutive system must:

(a) consist only of distribution and storage facilities and not have any collection or treatment facilities;

(b) obtain all of its water from, but not be owned or operated by, a public water system to which the regulations of Part 141 apply;

(c) not sell water to any person;

(d) not be a carrier that conveys passengers in interstate commerce;

(e) document that the wholesale water system from which it obtains all of its water will:

(i) include the consecutive system in its sampling plans;

(ii) be responsible for issuing public notice; and

(iii) be responsible for issuing consumer confidence reports for the consecutive system.

(2) To obtain an exclusion from the requirements of Part 141, a consecutive system must apply to the department. The request must be in writing and must document the system's conformance with the requirements of (1)(a) through (e). The request must be accompanied by a signed copy of the written agreement between the wholesale and consecutive systems. The agreement must implement the requirements of (1)(e).

(3) Based on a consideration of potential impacts to pubic health, the department may grant, partially grant, or deny a request for exclusion, and may revoke or modify any exclusion after it is granted.

(4) Unless otherwise required by the department, consecutive systems are not required to duplicate their wholesaler's entry-point sampling.

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

REASON: Proposed New Rule I clarifies the requirements applicable to consecutive systems. The new rule adopts federal language from 40 CFR 141.3 that excludes certain public water supply systems from the requirements of 40 CFR Part 141. The new rule modifies the federal rule by setting out a procedure for applying for an exclusion, and by requiring the applicant to demonstrate that the wholesale supplier will remain responsible for sampling, public notice, and consumer confidence reports. The new rule is necessary to implement federal provisions

regarding consecutive systems, and to ensure that the users of the consecutive systems are as protected as are users of the wholesale system.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., September 25, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden BY: */s/ Joseph W. Russell*
JAMES M. MADDEN JOSEPH W. RUSSELL, M.P.H.
Rule Reviewer Chairman

Certified to the Secretary of State August 18, 2008.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.102, 17.8.301, 17.8.901, 17.8.1007, 17.8.1201, 17.8.1206, and 17.8.1212 pertaining to incorporation by reference of current federal regulations and other materials into air quality rules	NOTICE OF SECOND PUBLIC HEARING AND EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On July 17, 2008, the Board of Environmental Review published MAR Notice No. 17-271 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1371, 2008 Montana Administrative Register, issue number 13. The board held a public hearing on August 6, 2008, and the initial comment period was scheduled to end on August 14, 2008.

2. On September 17, 2008, at 9:30 a.m., the board will hold a second public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules. This second hearing will supplement the hearing held on August 6, 2008.

3. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., September 8, 2008, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

4. The department is also extending the time within which to submit written comments. Written data, views, or arguments may be submitted to Elois Johnson at the contact information listed in paragraph 3, and must be received no later than 5:00 p.m. on September 25, 2008. Persons who testified at the initial hearing, or who submitted comments during the initial comment period, need not testify again or resubmit their comments. Any such previous testimony and comments will be included in the rulemaking record.

5. Inadvertently, the initial proposal notice was not sent to persons on the interested persons list for the board's air quality rulemaking proceedings. The second hearing and extended comment period are intended to provide these persons with the opportunity to testify and submit written comments.

6. The rules proposed to be amended remain the same as published in MAR Notice No. 17-271.

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

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

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff BY: */s/ Joseph W. Russell*
DAVID RUSOFF JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

Certified to the Secretary of State August 18, 2008.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.505 and 17.8.514 pertaining to air quality operation fees and open burning fees	NOTICE OF SECOND PUBLIC HEARING AND EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On July 17, 2008, the Board of Environmental Review published MAR Notice No. 17-272 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1378, 2008 Montana Administrative Register, issue number 13. The board held a public hearing on August 6, 2008, and the initial comment period was scheduled to end on August 14, 2008.

2. On September 17, 2008, at 9:45 a.m., or as soon as the hearing concludes for MAR Notice No. 17-274, whichever occurs later, the board will hold a second public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules. This second hearing will supplement the hearing held on August 6, 2008.

3. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., September 8, 2008, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

4. The department is also extending the time within which to submit written comments. Written data, views, or arguments may be submitted to Elois Johnson at the contact information listed in paragraph 3, and must be received no later than 5:00 p.m. on September 25, 2008. Persons who testified at the initial hearing, or who submitted comments during the initial comment period, need not testify again or resubmit their comments. Any such previous testimony and comments will be included in the rulemaking record.

5. Inadvertently, the initial proposal notice was not sent to persons on the interested persons list for the board's air quality rulemaking proceedings. The second hearing and extended comment period are intended to provide these persons with the opportunity to testify and submit written comments.

6. The rules proposed to be amended remain the same as published in MAR Notice No. 17-272.

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

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

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff BY: */s/ Joseph W. Russell*
DAVID RUSOFF JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

Certified to the Secretary of State August 18, 2008.

BEFORE THE TRANSPORTATION COMMISSION
DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I, II, III, IV, V, and VI, the amendment of ARM 18.6.202, 18.6.203, 18.6.211, 18.6.212, 18.6.213, 18.6.214, 18.6.221, 18.6.231, 18.6.241, 18.6.243, 18.6.244, 18.6.245, 18.6.246, 18.6.247, 18.6.248, 18.6.251, 18.6.262, 18.6.263, 18.6.264, and the repeal of ARM 18.6.242 pertaining to outdoor advertising control	)	NOTICE OF PROPOSED ADOPTION, AMENDMENT, AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On October 24, 2008, the Transportation Commission proposes to adopt, amend, and repeal the above-stated rules.

2. The Transportation Commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on September 19, 2008, to advise us of the nature of the accommodation that you need. Please contact Patrick Hurley, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001; telephone (406) 444-6068; fax (406) 444-7254; TTY (800) 335-7592; or e-mail phurley@mt.gov.

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

<u>NEW RULE I ON-PREMISE SIGNS - QUALIFYING LOCATIONS</u>

(1) On-premise signs which advertise activities conducted on the property upon which they are located do not require a permit from the department. The department shall be the sole determinant as to whether a sign qualifies as an on-premise sign after meeting all requirements of the Outdoor Advertising Act and these rules.

(2) The sign must be located on the same premises as the activity or property advertised; however, physical evidence rather than property lines determine whether the premises on which an activity is conducted qualifies to allow an on-premise sign.

(a) Premises include the area occupied by the buildings and appurtenances such as parking lots, storage areas, processing areas, or areas for the physical uses that are customarily incidental to the activity, including open spaces arranged and designed to be used in connection with the buildings or activities.

(b) Premises do not include vacant land, land used for unrelated activities, or

land that is separated by other ownerships or roadways.

(3) The purpose of the advertising sign must be the identification of:

(a) the principal establishment;

(b) the principal activity located on the premises;

(c) the principal products or services; or

(d) the sale or lease of the property on which the sign is located.

(4) On-premise signs which attempt or appear to attempt to direct the movement of traffic or which interfere with, imitate, or resemble any official traffic sign, signal, or device are prohibited.

(5) When a sign consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity, or if the sign brings rental or lease income to the property owner, the sign shall be considered the business of outdoor advertising and not an on-premise sign.

(6) Signs located on land in the following situations are not considered on-premise advertising:

(a) any land on which a sale or lease sign contains advertising for any product or service not conducted upon the premises;

(b) any land which is not used as an integral part of the principal activity, including but not limited to land which is separated from the activity by:

(i) a roadway;

(ii) a highway;

(iii) any other obstruction not used by the activity;

(iv) extensive undeveloped highway frontage contiguous to the land actually used by a commercial facility whether or not it is under the same ownership;

(c) any land which is used for or devoted to a separate purpose unrelated to the advertised activity;

(d) any land which is located more than one quarter mile from the principal activity or in closer proximity to the highway than the principal activity;

(e) any land occupied solely by structures or uses which serve no reasonable or integrated purpose related to the principal activity other than to attempt to qualify the land as a site for signs, including but not limited to playgrounds, camping areas, walking paths, fences, and maintenance sheds; or

(f) any land where the sign is located at or near the end of a narrow strip contiguous to the advertised activity, including but not limited to any configuration of land which cannot be put to any reasonable use related to the activity other than as a site for signs, such as wetlands, common or private roadways, or a strip of land held by easement or other lesser interest.

AUTH: 75-15-121, MCA
IMP: 75-15-111, MCA

REASON: The proposed new rule is necessary because the requirements which qualify an area to allow on-premise advertising have not previously been set forth in rule, thus leading to some confusion among sign owners as to whether or not a sign on certain property required a permit. The new rule will clarify that only signs which properly advertise goods or services offered within the boundaries of an appropriate premises fit the definition of on-premise signs which do not require a

permit from MDT. The proposed amendment will also bring the rule into compliance with Code of Federal Regulation requirements for on-premise advertising found at 23 CFR § 750.

NEW RULE II OFF-PREMISE SIGNS - LOCATIONS - COMPLIANCE WITH STATUTES, RULES, ORDINANCES (1) Off-premise signs visible from a controlled route which advertise activities not conducted on the property on which the sign is located require a permit from the department. Any outdoor advertising sign or structure which generates income for the sale or lease of the outdoor advertising sign, or the sale, lease, or rental of advertising space on the sign requires an off-premise sign permit from the department. The department shall be the sole determinant as to whether a sign qualifies as an off-premise sign after meeting all requirements of the Outdoor Advertising Act and these rules.

(2) Off-premise signs may be located in areas that are zoned industrial or commercial by a bona fide state, county, or local zoning authority.

(3) Off-premise signs may be located in unzoned commercial or industrial areas, which area contains a qualifying commercial or industrial activity, as determined by the department in accordance with the Outdoor Advertising Act and ARM 18.6.203.

(4) Off-premise signs may be located in areas in which both the future land use map and the current land development regulations designate the property for commercial or industrial development. In areas in which the future land use map and land development regulations do not specifically designate the parcel as commercial or industrial, but allow for multiple uses on the parcel including commercial or industrial, the department shall employ a use test to determine the appropriateness of the location for an off-premise sign permit as follows:

(a) the proposed sign location shall exhibit a minimum of three conforming businesses within 1600 feet of each other;

(b) the businesses shall be on the same side of the controlled route as the proposed sign location; and

(c) the proposed sign location shall be within 600 feet of at least one of the businesses.

(5) Off-premise signs visible from a controlled route must be located outside the government owned right-of-way, subject to the following setback:

(a) outside an incorporated area, no further than 660 feet from the outer edge of the right-of-way;

(b) inside an incorporated area, in compliance with the setback requirements established by local ordinance or other regulation.

(6) Off-premise signs shall only be located on property for which the permit applicant or holder has written permission from the person lawfully in control of the property to erect and maintain an off-premise sign.

(7) The provisions of this section shall not be deemed to supersede the rights and powers of counties and municipalities to enact outdoor advertising or sign ordinances.

(8) Off-premise signs permitted by the department shall also comply with all federal, state, county, and local statutes, rules, and ordinances on outdoor advertising.

AUTH: 75-15-121, MCA
IMP: 75-15-111, MCA

REASON: The proposed new rule is necessary to establish a category of signs known as "off-premise" signs as distinguished from "on-premise" signs in the previous new rule. The proposed new language will clarify the two categories of sign types established by the Outdoor Advertising Act, as well as how the sign type is determined by the department. The proposed new rule will also establish the requirement for off-premise signs to conform with local city and county regulations.

NEW RULE III FEES (1) Fees shall be transmitted by check payable to the Montana Department of Transportation. The department assumes no responsibility for loss in transit of such remittances. Applicants not submitting proper fees will be notified by the department. Fees are nonrefundable.

(2) The fees shall be as follows:

(a) Inspection fee (must accompany the sign permit application)	$100.00
(b) Initial permit fee for sign size:	
(i) 32 sq. ft. or less	$ 10.00
(ii) 33 sq. ft. to 375 sq. ft.	$ 50.00
(iii) 376 sq. ft. to 672 sq. ft.	$ 100.00
(iv) multiple face signs	$ 150.00
(c) Renewal fee (3 year cycle) for sign size:	
(i) 32 sq. ft. or less	$ 15.00
(ii) 33 sq. ft. to 375 sq. ft.	$ 75.00
(iii) 376 sq. ft. to 672 sq. ft.	$ 150.00
(iv) multiple face signs	$ 225.00
(d) Replacement permit plate	$ 20.00

AUTH: 75-15-121, MCA
IMP: 75-15-122, MCA

REASON: The new rule is necessary to better organize the fees charged by MDT's Outdoor Advertising Control section so that all applicants and permit holders may be notified of fees which will be charged by the department. Previously, the fees were scattered throughout the rules, making it difficult for the public to locate the appropriate fees. The proposed language will: retain the current inspection fee; decrease the initial permit fee by eliminating the monthly prorated amount previously charged; retain the current renewal fee for larger signs; decrease the renewal fee for smaller signs; and retain the current replacement permit plate fee. The department estimates the fee decreases will affect approximately 150 persons (new sign permit applicants and permit holders renewing smaller size signs) and will result in an estimated $5260 decrease in annual revenue.

NEW RULE IV MOBILE ADVERTISING DEVICES - SIGNS ON VEHICLES

(1) Off-premise mobile advertising devices on vehicles which are traveling on controlled routes are not subject to the provisions of the Outdoor Advertising Act or

administrative rules while traveling.

(2) Vehicles displaying off-premise mobile advertising devices being used for outdoor advertising purposes must not be parked on public or private land visible to the traveling public from any place on a controlled route, whether the display is permanent or portable, regardless of the length of time the vehicle is parked in any one or more locations.

(3) Signs on registered or unregistered motor vehicles, including but not limited to: semi-truck trailers, buses, trucks, RVs, mobile homes, or similar wheeled conveyances, which are determined by the department to be permanently or semi-permanently parked and clearly advertising to a controlled route shall be prohibited unless properly permitted under the provisions of the Outdoor Advertising Act and these administrative rules.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed new rule is necessary to clearly prohibit the use of mobile advertising devices, or car wrap-type signs which are usually placed on the side of an operational vehicle, and then parked for some length of time along a controlled route where they are visible to the public as advertising devices, without meeting the statutory requirements for permits, placement, etc. The vehicle is often frequently moved to a new location, with the sign owner then stating the new location is a "new sign" in a "new site" to avoid any regulations or permit requirements for off-premise advertising. The new rule will allow the department to enforce the prohibition on these signs as illegal advertising. The proposed rule will also require the permanent removal of unlawful advertising from parked semi-truck trailers and similar vehicles.

NEW RULE V REPAIR, RECONSTRUCTION, OR RELOCATION OF CONFORMING SIGNS (1) Repair, reconstruction, or relocation of a conforming sign which results in a change from that shown on the last approved permit application will require a new application for upgrade of the existing permit and will be charged the appropriate additional fees. Failure to obtain a permit upgrade prior to performing the repair, reconstruction, or relocation may result in revocation of the permit. Changes requiring a permit upgrade include changes in:

(a) location;
(b) height;
(c) width;
(d) area on which copy appears;
(e) number or position of the facings;
(f) types of materials used (e.g., wood to steel); or
(g) additions to the sign structure (e.g., adding lights).

(2) Any application for relocation, revision, or upgrade must meet the standard of lawful ordinance, regulation, or resolution of county or local government and the upgrade application must be approved by the county or local government, and approved by the landowner, before consideration by the department.

(3) The sign owner must obtain written permission from the land owner or

other person in lawful possession or control of the new proposed site to relocate a conforming permitted sign. The proposed relocation site must meet all zoning requirements or qualify as an unzoned commercial or industrial area.

(4) No outdoor advertising structure may be maintained from across right-of-way control access fences or boundaries.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-121, MCA

REASON: The proposed new rule is necessary to separate requirements for repair of conforming signs from nonconforming signs. Previously, the language for repair of both types of signs was contained in the same rule, and was therefore difficult to find. This new rule moves existing language on the requirement of a new upgrade application for repair and reconstruction of conforming signs to its own separate rule, and adds language on additional changes such as addition of lights, etc. thus making it easier to locate information on repair, reconstruction, or relocation of conforming signs only.

NEW RULE VI TEMPORARY SIGNS (1) Temporary signs are considered on-premise signs and may be erected in all zoning districts along controlled routes without permits for the purposes described in this rule only. Temporary signs must not:

(a) exceed 32 square feet in size;

(b) be placed on any location other than private property and may only be placed with the permission of the property owner;

(c) be placed in the public right-of-way or on public property;

(d) be attached on fences, power poles, traffic signal poles or boxes, street lights, trees, rocks, or other natural features;

(e) obstruct the view of motor vehicle operators or create a traffic hazard;

(f) be located within 500 feet of an intersection at grade along a primary highway, or within 500 feet of an interchange or rest area on the interstate highway system as measured from the beginning of the pavement widening for the interchange;

(g) be erected or maintained outside the time limits set forth in this rule for each category of temporary signs.

(2) Temporary signs must be removed within the time limits set forth for the sign category in this rule. The department shall notify the landowner of illegal signs which are not removed within ten days of the time limit expiration. The signs shall be removed by the department 24 hours after notification to the landowner.

(3) Temporary signs which meet criteria for the following categories may be erected:

(a) Temporary construction site identification signs erected during the construction period of a structure for the purpose of identifying the project, the owner or developer, architect, engineer, contractor and subcontractors, funding sources, and related information including but not limited to sale or leasing information. Construction site identification signs must not be erected prior to the issuance of a building permit, and must be removed from the subject site before the issuance of a

certificate of occupancy.

(b) Temporary real estate sale or lease directional signs erected for the purpose of directing interested persons to the location of a property actively listed for sale or lease. Real estate directional signs may only be erected during the period of a realtor's listing agreement for sale or lease of real property, or for 120 days of active sale activities without a listing agreement. The signs must be removed from the subject site no later than 15 days after the sale of the listed property or expiration of the listing agreement.

(c) Other temporary signs at the department's discretion, including but not limited to charity events or causes and public service announcements.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-121, MCA

REASON: The proposed new rule will establish standards for temporary signs. The rule is necessary because temporary signs have been used in the past, with no clear guidance to the public or the department as to size, location, length of time in place, etc. The proposed new rule will clarify the types of temporary signs which are allowed, and set standards for their use in Montana.

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

18.6.202 DEFINITIONS (1) "Abandoned sign" means a sign that is not maintained as required by these rules or meets any of the following:

(a) the sign remains in the absence of a valid lease;

(b) the sign has been without a message for a period of at least three months;

(c) the sign contains obsolete advertising matter;

(d) the sign is significantly damaged or dilapidated;

(e) the sign structure has not been erected;

(f) the sign structure has been removed; or

(g) the sign owner fails to pay the appropriate sign fees.

~~(1)~~ (2) "Advertising device" means any outdoor sign, display, device, figure painting, drawing, message, placard, poster, billboard, structure, or any other contrivance designed, intended, or used to advertise or to give information in the nature of advertising and having the capacity of being visible from any place on the main traveled way of any interstate, national highway system, or federal-aid primary highway system. This includes any device located outside or on the outside of any building which identifies or advertises any business, enterprise, organization or project, product, or service, including all parts such as frames and supporting structures located on any premises by means of painting on or attached bills, letters, numerals, pictorial matter, or electric or other devices including any airborne device tethered to any building, structure, vehicle, or other anchor and an announcement, notice, directional matter, name, declaration, demonstration, display, mural, or insignia, whether permanent, temporary, or portable installation. The term includes the sign face(s) and the sign structure. ~~(monuments,~~ Monuments, gravestones, and

dedication markers are not considered advertising devices~~)~~. Advertising device is synonymous with sign.

(3) "Apron" or "base" means the area beneath the bottom molding of the front of a billboard.

(4) "Back to back" means billboard faces erected on one structure facing in opposite directions.

(5) "Blank sign" means a sign structure that has no face or has faces without 100 percent advertising copy. The term includes all faces not leased, rented, or otherwise occupied by commercial advertising or a public service message. The term also includes signs containing notices the sign is for rent or lease.

(6) "Commercial advertising" means advertising of commercial interests which promotes merchandisers' goods and services and creates a potential financial benefit as a result of the exposure of the business name rather than advocating a social or political cause.

(2) remains the same but is renumbered (8).

~~(3)~~(7) "Commercial or industrial activity" ~~means~~ is defined at 75-15-103, MCA, and has the additional meaning of an activity which is permitted only in a commercial or industrial zone or a less restrictive zone by the nearest zoning authority within the state, except that none of the following is a commercial or industrial activity:

(a) through (i) remain the same.

(9) "Commercial or industrial zone or area" is defined at 75-15-103, MCA, and has the additional meaning of those districts established by the zoning authorities as being most appropriate for commerce, industry, or trade, regardless of how labeled. The zones are commonly categorized as commercial, industrial, business, manufacturing, highway service or highway business (when these latter are intended for highway-oriented business), retail, trade, warehouse, and similar classifications.

~~(4)~~(10) "Conforming sign" means ~~one which was lawfully erected and which complies with spacing, zoning, size, lighting and all other requirements under the Outdoor Advertising Act and the outdoor advertising regulations~~ a sign legally erected and maintained in accordance with federal, state, and local laws.

(11) "Controlled route" means any route on the national highway system, which includes the interstate system, and any route on the former federal-aid primary system in existence on June 1, 1991.

(12) "Customary maintenance" means the action necessary to keep a sign in good condition by replacement of parts damaged or worn by age, or painting of areas exposed to the weather.

(13) "Destroyed sign" means a sign that is no longer in existence due to factors other than vandalism or other criminal or tortious acts. The term includes a sign which has been blown down by the wind and sustains damage in excess of 50 percent.

(14) "Dilapidated sign" means a sign which is shabby, neglected, or in disrepair, or which fails to be in the same form as originally constructed, or which fails to perform its intended function of conveying a message. Characteristics of a dilapidated sign include, but are not limited to structural support failure, a sign not supported as originally constructed, panels or borders missing or falling off, intended messages that cannot be interpreted by the motoring public, or a sign which is

blocked by overgrown vegetation outside the highway right-of-way.

(15) "Directional sign" means a sign erected for the purpose of identifying publicly or privately owned places that feature natural phenomena or ranch locations; historical, cultural, scientific, religious, or educational opportunities; areas of scenic beauty or outdoor recreation areas; or ranch activities.

(16) "Discontinued sign" means a sign no longer in existence. A discontinued sign includes a sign of which any part of a sign face is missing for more than 60 days. In some cases, a sign may be both discontinued and dilapidated.

(5) remains the same but is renumbered (17).

(18) "Facing" means the direction that a panel is exposed to display advertising copy.

~~(6) "Federal/state agreement" means the agreement entered into January 27, 1972, by and between the United States of America, represented by the secretary of transportation and the state of Montana, through the Department of Transportation to promote the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in interstate and primary highways, to promote the safety and recreational value of public travel and to preserve the natural beauty. At a minimum the state of Montana shall implement and carry out the provisions of 23 USC 131, and the national policy in order to remain eligible to receive the full amount of all federal-aid highway funds apportioned under 23 USC 104.~~

(19) "Gore" means the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way on highway interchanges.

(20) "Illegal sign" means those signs which are erected or maintained in violation of laws.

(21) "Illuminated" means outdoor advertising structures with electrical equipment installed for illumination of the message at night.

(22) "Interchange" means a junction of two or more highways by a system of separate levels that permit traffic to pass from one to another without the crossing of traffic streams, and a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels.

(23) "Intersection" means a system of two or more interconnecting roadways without a grade separation providing for the exchange of traffic. Only a road, street, or highway which enters directly into the main-traveled way of an interstate or primary highway is regarded as intersecting. An alley, undeveloped right-of-way other than an interstate or primary highway, a private road, or a driveway are not regarded as an intersecting street, road, or highway.

~~(7)~~(24) "Main-traveled way" means the interstate, national highway system, and federal-aid primary highway system on which through traffic is carried. In case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. The term does not include such facilities as frontage roads, turning roadways, or parking areas.

(25) "Mobile advertising device" or "car wrap" or "taxi display" means devices displayed on vehicles that may independently become part of traffic flow, or may be parked at specific locations, and which are capable of being transported over public roads and streets whether or not it is so transported.

~~(8)~~(26) "Noncommercial sign" means a sign that does not display ~~a~~ commercial ~~message~~ advertising. ~~For the purpose of this rule, only "public service" signs such as DARE, or ABATE, are considered noncommercial signs.~~ The ~~Montana~~ department ~~of Transportation~~ shall make the determination of a noncommercial sign designation on a case-by-case basis. The term does not include official signs.

~~(9)~~(27) "Nonconforming sign" ~~means one~~ is defined in 75-15-111, MCA, and also has the meaning of an outdoor advertising structure which was lawfully erected but which does not comply with the provisions of state law or state ~~regulations~~ administrative rules passed at a later date, or which fails to comply with state law or state ~~regulations~~ administrative rules due to changed conditions. ~~Illegally~~ The term does not include illegally erected or maintained signs ~~are not nonconforming signs~~.

(28) "Obsolete sign" means a sign that identifies or advertises a business or other entity that has relocated or no longer exists, or products or services that are no longer available, or events or activities that occurred in the past.

(10) remains the same but is renumbered (29).

~~(11)~~(30) "Off-premise ~~signs~~ sign" means ~~all signs which are not on-premise signs as defined in (11)~~ a sign directing attention to a specific business, product, service, entertainment event or activity, or other commercial activity that is not sold, produced, manufactured, furnished, or conducted at the property upon which the sign is located.

~~(12)~~(31) "On-premise sign" means ~~signs erected on property for the sole purpose of advertising its sale or lease or of advertising an activity conducted on the property. Physical facts rather than property lines determines whether the premises on which an activity is conducted qualifies to allow an on-premise sign. The sign must be located on the same premises as the activity or property advertised. Premises include the area occupied by the buildings and appurtenances such as parking lots, storage areas, processing areas or areas for the physical uses that are customarily incidental to the activity, including open spaces arranged and designed to be used in connection with the buildings or activities, but does not include vacant land, land used for unrelated activities, or land that is separated by other ownerships or roadways. The purpose of the advertising sign must be the identification of the establishment or activity located on the premises or its products or services, or the sale or lease of the property on which the sign is located. If the activity is over 660 feet from the nearest point of the highway and is accessed by an approach and road from the highway, any sign, landscaped area or other appurtenance associated with the activity that is adjacent to the approach and access road shall not be used to qualify off-premise signs~~ a sign which consists solely of the name of the establishment or which identifies the establishment's principal or accessory products or services offered on the property or advertises the sale or lease of the property on which the sign is located. The sign must be located on the same premises as the establishment, activity, or property advertised.

(32) "Panel" means a billboard face, but can also refer to a single sign structure.

(33) "Permit" means a license granted by state or local government that authorizes a sign structure to be erected and maintained at a specific site.

(34) "Right-of-way" means the area along a highway or arterial street that is

under the control of a city, county, or state.

~~(13)~~(35) "Sign face" means ~~that~~ the surface of the sign that carries the advertising message and is the portion of the sign structure visible from a single direction of travel and available for advertising. It includes border and trim, but excludes the base or apron, supports, and other structural members. The total area of all sign faces may also be referred to as the "sign area." One sign structure may have more than one face.

(14) remains the same but is renumbered (36).

(37) "Spot-zoning" means the labeling of tracts near highway interchanges as "commercial" or "industrial" solely to permit advertising devices.

(38) "Strip-zoning" means the labeling of any stretch of land adjacent to controlled highways as "commercial" or "industrial" solely to permit advertising devices.

(39) "Trim" means the moldings surrounding the face of a sign structure.

(40) "Unzoned commercial or industrial area" is defined in 75-15-103, MCA, and also has the meaning of an area with no comprehensive zoning, or where a local municipality cannot zone.

(41) "V-type sign" means a sign structure that consists of multiple sign facings placed at angles to each other, oriented in different directions and not exceeding ten feet apart at the nearest point of each other.

AUTH: 75-15-121, MCA
IMP: 75-15-103, 75-15-111, 75-15-112, 75-15-113, 75-15-121, MCA

REASON: The proposed amendments are necessary to add definitions for words and phrases which are used throughout the outdoor advertising rules. Previously, undefined words and terms caused difficulties for both department staff and the public in deciding whether certain existing outdoor signs or advertising properly met MDT's statutes and rules for regulation of outdoor advertising. The proposed amendments will clarify and simplify use of the administrative rules in the area of outdoor advertising. The proposed amendments will also bring Montana rules in compliance with federal regulations.

18.6.203 UNZONED COMMERCIAL OR INDUSTRIAL ACTIVITY

(1) ~~As clarification of the statutory requirements, the~~ The following criteria shall be used to determine whether an activity qualifies an area to be considered unzoned commercial or industrial:

(a) ~~The~~ the commercial or industrial permanent buildings, ~~or~~ improvements, or industrial activities area comprising a business used to qualify an area must be located within 660 feet of the right-of-way of an interstate or primary highway~~.~~ ;

(b) ~~A~~ a commercial or industrial business ~~located on what is primarily used as residential property will not qualify an area as an unzoned commercial or industrial area.~~ may not be located inside a structure which is also used as a residence, nor in a building intended for use by the resident such as a garage or other outbuilding. If a residence exists on the location, the business must be located in a separate building from the residence, and must meet all requirements in this rule for utilities, parking, etc.;

(c) ~~Commercial~~ commercial and industrial activities shall have been in business at least one year prior to being considered as qualifying the area as an unzoned commercial or industrial area~~.~~ ;

~~(b)~~(d) ~~The~~ the permanent buildings or improvements comprising a commercial business intended to serve the traveling public must be clearly visible to the traveling public and be easily recognizable as a commercial activity~~.~~ ;

(e) ~~A~~ a commercial activity must be connected to one or more utilities and shall be occupied and open to the public during regularly scheduled hours in excess of 20 hours per week~~.~~ ;

(f) ~~Signs~~ signs, displays, or other devices identifying the commercial or industrial business may be considered in the determination of visibility~~.~~ ;

(g) ~~Seasonal~~ seasonal (but not temporary or transient) commercial or industrial activities may be considered as a qualifying activity at the discretion of the ~~Montana~~ department ~~of Transportation.~~ ;

(h) ~~Industrial activities comprise the area~~ readily identifiable areas used for industrial activities exist in which the primary uses are the manufacturing, servicing, or storage of goods ~~occupied by the regularly used buildings, parking lot or storage or processing area of an industrial activity located within 660 feet of an interstate or primary highway not predominantly used for commercial purposes.~~ ;

~~(c) If the activity is over 660 feet from the nearest point of the highway, and is accessed by an approach and road from the highway, any sign, landscaped area or appurtenance associated with the activity adjacent to the approach and access road shall not be used to qualify off-premise signs.~~

(i) a commercial activity shall have direct vehicular access from a public road that is normal and customary for ingress and egress by the public to the activity as well as adequate parking to accommodate public access;

(j) a commercial activity shall include customary facilities such as indoor restrooms, running water, functional electrical connections, and adequate heating and shall be equipped with a permanent flooring from material other than dirt, gravel, or sand;

(k) a commercial or industrial business shall hold a current, valid business license issued by a local, county, or state government which authorizes the business to operate from that location;

(l) any commercial or industrial building shall have a permanent foundation, built or modified for its current commercial or industrial use. Where a mobile home is used as a business office, all wheels and axles and springs shall be removed. The vehicle shall be permanently secured on piers, pad, or foundation;

(m) a self-propelled vehicle shall not qualify for use as a commercial or industrial business or office for the purpose of these rules.

~~(d)~~(2) A maximum of two signs shall be permitted from a qualifying activity~~, .~~ ~~and they~~ The sign(s) shall be located on the same side of ~~and adjacent to~~ the controlled highway ~~of~~ as the qualifying activity, unless the property is separated from the controlled highway by a frontage, access, or other type of road parallel to the controlled highway. If the property is located adjacent to a parallel road, the sign(s) shall be located on the same side of the parallel road as the qualifying activity, and shall not be located between the parallel road and the controlled highway.

(3) Unzoned commercial or industrial areas are not created when:

~~(e)~~(a) ~~No~~ an industrial or commercial activity ~~which~~ is located either partially or totally within an area which has been zoned by a bona fide state, county, or local zoning authority ~~may be used to qualify an area as an unzoned commercial or industrial area.~~ ;

~~(f)~~(b) ~~A~~ a commercial or industrial activity is engaged in or established primarily for the purpose of qualifying an area for the displaying of outdoor advertising; ~~will not create an unzoned commercial or industrial area. It shall be rebuttably presumed that any such activity is for the primary purpose of qualifying an area for outdoor advertising if the activity is not reasonably accessible to the public, if it is not connected to one or more utilities, or if no business is actually conducted on the premises.~~

(c) commercial or industrial activities are incidental to or different from primary land uses in the immediately adjacent surrounding area;

(d) activities are conducted in a building that is used to store trade equipment or that is not integral to the business operation where actual business transactions take place;

(e) spot-zoning or strip-zoning of an area for the displaying of outdoor advertising has occurred.

(4) If the qualifying commercial or industrial business at the sign location ceases for a period of nine months, the sign will be deemed nonconforming, and must adhere to all outdoor advertising statutes and rules on repair or replacement of nonconforming signs. If a qualifying commercial or industrial business again becomes operational at the sign location, the sign will revert to its former conforming status for the duration of the business operation and nine months thereafter.

AUTH: 75-15-121, MCA
IMP: 75-15-103, 75-15-111, 75-15-113, MCA

REASON: The proposed amendment is necessary to clarify the types of activities and premises which may qualify property as an unzoned commercial or industrial activity sufficient to allow a sign with off-premise advertising to be placed on the property. The proposed rule amendment would give additional detail to allow MDT and the public to ascertain whether the activity conducted on the site would qualify the property for an off-premise sign. The amended language clarifies when the statutory requirement has been met. The proposed amendments will also bring Montana rules in compliance with federal regulations found at 23 CFR § 750.

18.6.211 PERMITS (1) A permit must be obtained for each outdoor advertising sign which meets the requirements of the Montana Outdoor Advertising Act 75-15-101, et seq, MCA, and these rules.

(2) A check payable to the Montana Department of Transportation in the amount of the nonrefundable inspection fee and the nonrefundable initial permit fee must accompany the sign permit application.

(3) A nonrefundable inspection fee ~~in the amount of $100.00 will~~ shall be assessed for each off-premise outdoor advertising sign erected within any area subject to state control by the department.

(4) ~~The~~ An initial permit fee shall be ~~24/36 of the three-year renewal fee plus~~

~~1/36 of said renewal fee for each full month remaining in each calendar year following application approval~~ assessed for each off-premise outdoor advertising sign.

~~(5) The initial permit fee must be paid within 30 days from the approval of the application or the permit may be canceled.~~

~~(6)~~(5) Signs shall be assigned a permit number and given a permanent identification plate that must be attached to the structure. Permit plates remain the property of the department and shall be returned to the department upon relinquishment or revocation of the permit or upon request of the department.

(6) Permits ~~and~~ may be renewed every three years ~~thereafter~~ on the appropriate January 1 renewal cycle date upon payment of a renewal fee ~~as follows:~~

~~(a) 20 cents per square foot for signs 376 feet or more;~~

~~(b) if the sign structure has multiple sign faces, the renewal fee is based on the total square footage of the sign area; or~~

~~(c) $75.00 for signs with a face(s) of 375 square feet or less~~.

(7) and (8) remain the same.

(9) Ownership of a sign permit ~~will~~ may not be transferred without the express~~ed~~ written consent of the permit holder(s) on a form provided by the department. The current permit holder(s) must sign the ~~document~~ form transferring the permit.

(10) Permits ~~cannot be canceled except by~~ may be relinquished at the written request of either the permit holder(s) or the landowner(s) subject to the department's approval. ~~or by violations of the provisions of the Outdoor Advertising Act.~~ The document requesting ~~cancellation~~ relinquishment of a permit must be signed by the current permit holder or the landowner(s).

~~(11)~~ If the permit holder(s) are unable or unwilling to sign the ~~cancellation~~ relinquishment document, the landowner(s) may request ~~cancellation~~ revocation of the permit by providing the department with a document stating the reason for ~~cancellation~~ revocation such as termination of the land lease between the permit holder(s) and the landowner(s) and indicating whether the landowner(s) ~~have~~ has purchased the sign structure or if the sign structure will be removed. The landowner(s) must sign this document.

(11) Permits may be revoked upon a finding of a violation of the provisions of the Outdoor Advertising Act or the outdoor advertising administrative rules.

AUTH: 75-15-121, 75-15-122, MCA
IMP: 75-15-122, MCA

REASON: The proposed amendment is necessary to clarify the types of outdoor advertising signs which require permits, as the requirements are currently scattered throughout statutes and rules, and are difficult to locate. The proposed amendment is also necessary to remove fee language from this rule, as all fee schedules will now be contained in only one fee rule, currently proposed as New Rule III. This amendment will assist applicants and permit holders in locating correct fees for sign applications and permit renewals. The proposed amendment will also standardize revocation language and reorganize some rule language for clarity.

18.6.212 PERMIT APPLICATIONS - NEW SIGN SITES (1) Applications for outdoor advertising permits will be processed in the order that they are received by the department. Applications will be date-and-time stamped upon receipt by the department.

(2) If applications for outdoor advertising permits are received by the department for two or more signs in such proximity to each other, or to existing permitted signs, or for any other reason such that only one of them may receive a state outdoor advertising permit, they will be considered in the order in which they are received by the department.

(3) An application rejected for incompleteness, inaccuracy, or other valid cause shall not retain its place before other competing applications (if any), but, if resubmitted, will be considered a new application as of the date and time it is received.

~~(1)~~(4) Applications for permits shall be submitted on forms provided by the department and must contain a minimum of the following:

(a) through (d) remain the same.

(e) description of structure including width of sign, height of sign, height of structure, type of sign (single-faced, double-faced, v-type, multi-faced), lighted (yes/no), and estimated cost of construction to include labor and material; ~~and~~

(f) landowner consent~~.~~ ;

(g) property description or legal description; and

(h) a scale drawing with all details of the proposed sign structure, including accurate dimensions. All measurements must be from the outer edges of the regularly used buildings, parking lots, storage or processing and landscaped areas of the commercial or industrial activities, not from the property lines of the activities, and must be along or parallel to the edge of the pavement of the highway.

~~(2)~~(5) Applications for permits must be accompanied by the following:

~~(a) sketch of the area to include the legal description of the proposed sign location;~~

~~(b)~~(a) both the non-refundable ~~application~~ inspection fee and the nonrefundable initial permit fee;

(b) a local zoning certification for outdoor advertising on a form provided by the department; and

(c) a business license issued by a local, county, or state government authorizing the business to operate at the qualifying location, when the application is for a site located in an unzoned commercial or industrial area.

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

(7) Approval of an application and issuance of a permit does not alleviate an applicant from responsibility to comply with all applicable county or local regulations. Any violation of county or local regulations may result in revocation of the permit.

AUTH: 75-15-121, MCA
IMP: 75-15-122, MCA

REASON: The proposed amendment is necessary to set forth the process by which the department receives and prioritizes sign applications. The current rule language does not address the situation of multiple permit applications, nor explain

the department's process in assigning highest priority. The proposed rule language will assist applicants in understanding prioritization. The proposed amendment will also clarify sketch measurements as attached to an application. The proposed amendment will also specifically notify applicants that local and county outdoor advertising regulations must also be followed so applicants may comply with this requirement before submitting an application to the department.

18.6.213 PERMIT ATTACHMENT (1) remains the same.

(2) The permit plate ~~shall~~ must be attached to the sign or the supporting structure near the lower left corner of the sign (or supporting pole/beam) facing the traffic. The permit plate must be visible from the roadway.

(3) Permits which are affixed to the wrong sign or are otherwise in violation of requirements may be ~~canceled~~ revoked by the department if the deficiency continues for more than 30 days.

(4) If the department ~~cancels~~ revokes a permit, the sign for which the permit was issued becomes an illegal sign and must be removed.

(5) If the original permit plate has been lost or destroyed, a ~~substitute~~ replacement permit plate may be obtained from the department upon application and payment of a ~~$20.00~~ fee listed in [NEW RULE III].

AUTH: 75-15-121, MCA
IMP: 75-15-122, MCA

REASON: The proposed amendments will clarify rule language on the mandatory requirement of permit plates. The proposed amendments will also update language from "cancel" to "revoke" to better describe the process by which the department may terminate a permit under the statutes. Finally, the proposed amendment will delete the fee language from this rule, as all fee language will now be found in the fee rule at proposed New Rule III.

18.6.214 RENEWALS (1) ~~Although the department plans, as a courtesy, to remind sign owners to apply for renewal of permits,~~ A renewal notice may be sent by the department. The department's failure to issue such notice will not ~~serve to~~ excuse the sign owner from ~~his~~ the sign owner's duty to make proper application for renewal of a permit. Failure to submit the mandatory sign permit renewal fee within 30 days after expiration of the permit may result in ~~cancellation~~ revocation.

AUTH: 75-15-121, MCA
IMP: 75-15-122, MCA

REASON: The proposed amendment is necessary to explain the department is not mandated to send out permit renewal notices, but the duty to timely renew remains with the permit holder. The proposed amendment will also make the rule language gender neutral. Finally, the proposed amendment will update the permit discontinuance process language from "cancel" to "revoke."

18.6.221 NEW SIGN ERECTION - CONSTRUCTION STANDARDS (1) ~~The~~

~~sign owner within six~~ Within three months of the date of issuance of the permit, which is the date the application was approved, the sign owner will:

(a) remains the same.

~~(i) an extension of time to erect the structure may be granted upon written request from the sign owner and at the discretion of the Montana Department of Transportation;~~

(b) through (e) remain the same.

(2) ~~Signs may not be moved and re-erected in a new location without obtaining a new permit.~~ When construction has been delayed through no fault of the applicant, an extension of time to erect the structure may be granted upon written request from the sign owner which explains the reason for the request. Extensions may be granted at the discretion of the department. In no instance will the availability of materials or contract problems qualify for a time extension.

(3) Where a sign is erected with the purpose of its message being read from two or more highways, one or more of which is a controlled highway, the more stringent of application control requirements will apply.

(4) Signs shall be rigidly suspended by means of fastening or supports so as not to be free-swinging, nor a danger to persons or property.

(5) Sign structures shall be designed and constructed to withstand wind loads of 80 miles per hour or greater.

AUTH: 75-15-121, MCA
IMP: 75-15-113, 75-15-122, MCA

REASON: The proposed amendment is necessary to better organize the rule language to clarify the reasons for grant or denial of an extension of time to erect a sign. The proposed amendment will also explain the department's process in situations where the sign is visible from two or more highways, and set construction standards for signs.

18.6.231 OFF-PREMISE SIGN ~~SPACING~~ STANDARDS (1) ~~Alleys, undeveloped rights-of-way, private roads and driveways shall not be regarded as intersecting streets, roads or highways.~~ Standards for off-premise permitted signs are found at 75-15-113, MCA, and include the additional standards in this rule, unless otherwise controlled by standards for the specific type of sign (church and service clubs, directional, cultural, noncommercial, or official) as found in these rules.

(2) ~~Only roads, streets and highways which enter directly into the main-traveled way of the primary highway shall be regarded as intersecting.~~ Off-premise permitted signs on controlled routes must comply with the following spacing requirements:

(a) signs adjacent to an interstate highway or limited-access primary highway must be a minimum of 500 feet apart on the same side of the roadway;

(b) signs adjacent to primary highways must be a minimum of 300 feet apart on the same side of the roadway;

(c) signs, whether or not visible to the main traveled way of the interstate system or other controlled route, must not be located within the limits of a grade

separated interchange, including its entrance or exit roadways. The limits of an interchange shall include 500 feet beyond the beginning or ending of the gore, or pavement widening, for each entrance or exit roadway, along the controlled route and all interconnecting roadways;

(d) signs, whether or not visible to the main traveled way of a controlled route, must not be located within 500 feet of an intersection in rural areas, or within 140 feet of an intersection in cities or towns;

(e) signs must not be located within 500 feet of any of the following that are adjacent to the controlled route unless the signs are in an incorporated area:

(i) public parks;

(ii) public forests;

(iii) public playgrounds; or

(iv) scenic areas designated as such by the department or other state agency having and exercising this authority;

~~(3)~~(f) ~~Official~~ official and ~~"~~on-premise~~"~~ signs shall not be counted nor shall measurements be made from them for purposes of determining compliance with ~~the above~~ off-premise sign spacing requirements~~.~~ ;

~~(4)~~(g) ~~The~~ the minimum distance between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs~~.~~ ;

~~(5)~~(h) ~~Multi~~ multi-faced, back-to-back, and v-type signs shall be considered as a single sign or structure.

~~(a)~~ Multi-faced signs may be positioned side-by-side on a single structure or stacked vertically on a single structure, and are to be considered as one sign for spacing and permitting purposes~~.~~ ;

~~(b)~~(i) ~~Side~~ side-by-side signs on individual structures are considered as two signs for both spacing and permit requirements.

~~(c) V-type sign means two signs erected independently of each other with multiple display surfaces having single or multiple messages visible to traffic from opposite directions, with an interior angle between the two signs of not more than 120 degrees and the signs separated by not more than 10 feet at the nearest point.~~

(3) Off-premise permitted signs on controlled routes must comply with the following size requirements:

(a) signs, including the total number of sign faces facing the same direction, must not exceed 672 square feet in area, including border and trim, but excluding base or apron, supports, or other structural members;

(b) signs must not exceed 48 feet in length;

(c) signs must not exceed 30 feet in height, as measured from a right angle from the surface of the roadway at the centerline of the controlled route, or from a point on the sign structure which is at the same elevation as the crown of the roadway to the top of the highest sign face.

(4) Off-premise permitted signs on controlled routes which have any of the following characteristics shall not be erected nor maintained:

(a) signs advertising activities that are illegal under state or federal laws, rules, or regulations in effect at the location of such signs or at the location of such activities;

(b) illegal, destroyed, abandoned, or discontinued signs;

(c) signs that are not clean and in good repair;

(d) signs that are not securely affixed to a substantial structure;

(e) signs which attempt or appear to attempt to direct the movement of traffic or which interfere with, imitate, or resemble any official traffic sign, signal, or device;

(f) signs which prevent the driver of a vehicle from having a clear and unobstructed view of at-grade intersections, approaching or merging traffic, official traffic control signs, or other traffic control devices;

(g) signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights;

(h) signs which have lights that change intensity or color, lasers, strobe lights, or other lights with stroboscopic effect;

(i) signs which use lighting in any way unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled way of the highway, or is of such low intensity or brilliance as to not cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle;

(j) signs which move or have any animated or moving parts;

(k) signs which are erected or maintained upon fences, power poles, traffic signal poles or boxes, street lights, trees, or painted or drawn upon rocks or other natural features;

(l) signs located within ten feet of a property line of a residential zoning district or an existing residential use, or within ten feet of a public right-of-way which do not aim the light fixture away from the property line, residential use area, or right-of-way line and shield the side closest to the property line, residential use area, or right-of-way line so that the light fixture illuminates only the face of the sign;

(m) roof signs, inflatable signs, snipe signs, banners, pennants, wind-operated devices, sandwich signs, moving signs, freestanding signs, flashing signs, beacon light signs with moving or alternating or traveling lights;

(n) signs located in a scenic area or parkland area;

(o) signs located within government owned right-of-way limits, except for specific information signs and tourist oriented directional signs under 60-5-501, MCA.

AUTH: 75-15-121, MCA
IMP: 75-15-113, 75-15-121, MCA

REASON: The proposed amendment is necessary to notify the public of standards for off-premise signs, some of which are contained in statute, but which standards are expanded through this rule. Although the department may not unnecessarily repeat statutory language in the administrative rules, the rule must direct the public to the standards so they are not overlooked. The proposed amendments will clearly set forth standards for spacing, size, and characteristics of off-premise signs visible from controlled routes. Previously, the standards were scattered throughout the rules and more difficult to locate. The amendment will reorganize the rule language for ease of reading. Finally, the amendment will delete unnecessary definitional language from the rule, as this information is contained elsewhere in the rules.

18.6.241 CHURCH AND SERVICE CLUB SIGNS (1) remains the same.

(a) Not more than a total of four signs may be erected by any one group, of which no more than three can face in the same direction of travel. ~~.~~ ;

(b) Signs may not be more than five miles from where the meetings or functions are regularly held. ~~.~~ ;

(c) The size of each new sign shall not exceed eight square feet. ~~.~~ ;

(d) ~~The activity advertised must be a regularly scheduled daily, weekly, monthly, or quarterly meeting, function or gathering which members of the traveling public using the highway will be likely to want to find and attend.~~ Signs must not exceed 30 feet in height, as measured from a right angle from the surface of the roadway at the centerline of the controlled route, or from a point on the sign structure which is at the same elevation as the crown of the roadway to the top of the highest sign face;

(e) Signs visible from controlled routes must not be located within 500 feet of an intersection in rural areas, or within 140 feet of an intersection in cities or towns;

(f) Signs visible from interstate highways must not be located within 500 feet of the gore of an interchange;

~~(e)~~(g) ~~The normal prescribed permit application fee shall apply to church and service club signs.~~ Public forests, public playgrounds, and designated scenic areas shall be considered to be a conforming area with respect to the erection of these signs. ~~.~~ ;

(h) Church and service club signs shall meet all general restrictions on characteristics for off-premise signs found in ARM 18.6.231;

(i) The activity advertised must be a regularly scheduled daily, weekly, monthly, or quarterly meeting, function, or gathering which members of the traveling public using the highway will be likely to want to find and attend;

(f) remains the same but is renumbered (j).

(2) A permit must be obtained for each church or service club sign accompanied by a nonrefundable inspection fee. There is no initial permit fee or renewal fee for church or service club signs.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, 75-15-121, MCA

REASON: The proposed amendment is necessary to more clearly set forth standards for church and service club signs. The proposed amendment will also specifically state a permit is required for church or service club signs because the current language does not make this requirement clear. The proposed amendment will also clarify church and service club signs are not subject to initial permit fees or permit renewal fees.

18.6.243 DIRECTIONAL SIGNS (1) Directional ~~and other official~~ signs ~~and notices, which signs and notices include, but are not limited to, signs and notices~~ pertaining to natural wonders, scenic and historical attractions, ~~as authorized or required by law are, in addition to statutory rules and regulations promulgated by the commission, subject to standards promulgated by the Federal Highway Administration.~~ or ranching, grazing, or farming activities may be erected and

maintained providing the signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. Descriptive words or phrases, and pictorial or photographic representations of the activity or its surrounding areas are prohibited. To be eligible, privately owned attractions or activities must be nationally or regionally known, and of interest to the traveling public.

(2) Directional signs shall not exceed the following size limits:

(a) maximum area – 32 square feet;

(b) maximum height – 4 feet;

(c) maximum length – 8 feet.

(3) Directional signs shall meet the following spacing requirements:

(a) directional signs visible from controlled routes must not be located within 500 feet of an intersection in rural areas, or within 140 feet of an intersection in cities or towns;

(b) directional signs visible from interstate highways must not be located within 500 feet of the gore of an interchange;

(c) directional signs must not be located within 500 feet of any of the following that are adjacent to the controlled route unless the signs are in an incorporated area:

(i) public parks;

(ii) public forests;

(iii) public playgrounds; or

(iv) scenic areas designated as such by the department or other state agency having and exercising this authority;

(d) directional signs facing the same direction of travel shall be limited to signs spaced at least one mile apart;

(e) directional signs pertaining to the same activity, facing the same direction of travel, which are erected along a single route approaching the activity are limited to one sign;

(f) directional signs located adjacent to the interstate system shall be within 75 air miles of the activity;

(g) directional signs located adjacent to the primary system shall be within 50 air miles of the activity.

(4) Directional signs shall meet all general restrictions on characteristics for off-premise signs found in ARM 18.6.231.

(5) A permit must be obtained for each directional sign accompanied by a nonrefundable inspection fee. There is no initial permit fee or renewal fee for directional signs.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, ~~75-15-121,~~ MCA

REASON: The proposed amendment will combine language from ARM 18.6.242 and 18.6.243 into one rule on directional signs. The proposed amendment is necessary because the two rules addressed the same type of signs, but did not contain identical requirements for directional signs. The proposed new language will organize and clarify all standards for directional signs for easier access by the public

and by sign owners.

18.6.244 CULTURAL SIGNS (1) Signs or displays advertising cultural exhibits of nonprofit historical or arts organizations may be erected and maintained ~~within 660 feet of the nearest edge of the right-of-way of interstate and primary highways, provided the signs conform to the following standards:~~ adjacent to controlled routes.

~~(a) The following signs are prohibited:~~

~~(i) Signs advertising activities that are illegal under federal or state laws or regulations in effect at the location of those signs or at the location of those activities.~~

~~(ii) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.~~

~~(iii) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.~~

~~(iv) obsolete signs.~~

~~(v) Signs which are structurally unsafe or in disrepair.~~

~~(vi) Signs which move or have any animated or moving parts.~~

~~(vii) Signs located in rest areas, parklands or scenic areas.~~

~~(b)~~(2) ~~No~~ Cultural signs shall not exceed the following size limits:

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

~~(iv)~~(d) All size dimensions include border and trim, but exclude supports.

~~(c) Signs may be illuminated, subject to the following:~~

~~(i) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.~~

~~(ii) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation or a motor vehicle are prohibited.~~

~~(iii) No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.~~

~~(d)~~(3) ~~The~~ Cultural signs must meet the following spacing requirements ~~must be met~~:

~~(i)~~(a) Each location of a cultural sign must be approved by the Montana Department of Transportation~~.~~ ;

~~(ii) No cultural sign may be located within 2,000 feet of an interchange, or intersection at grade along the interstate system or other freeways (measured along the interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).~~

~~(iii) No cultural sign may be located within 2,000 feet of a rest area, parkland, or scenic area.~~

(b) cultural signs visible from controlled routes must not be located within 500 feet of an intersection in rural areas, or within 140 feet of an intersection in cities or towns;

(c) cultural signs visible from interstate highways must not be located within

500 feet of the gore of an interchange;

(d) cultural signs must not be located within 500 feet of any of the following that are adjacent to the controlled route unless the signs are in an incorporated area:

(i) public parks;

(ii) public forests;

(iii) public playgrounds; or

(iv) scenic areas designated as such by the department or other state agency having and exercising this authority;

~~(iv)~~(e) ~~No two cultural signs~~ cultural signs facing the same direction of travel shall be spaced ~~less~~ more than one mile apart~~.~~ ;

~~(v)~~(f) ~~Not more than three~~ cultural signs pertaining to the same activity, ~~and~~ facing the same direction of travel, ~~may be~~ and erected along a single route approaching the activity~~.~~ are limited to three signs;

~~(vi)~~(g) ~~Signs~~ cultural signs located adjacent to the interstate system shall be within 75 air miles of the activity; ~~and~~

~~(vii)~~(h) ~~Signs~~ cultural signs located adjacent to the primary system shall be within 50 air miles of the activity.

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

(6) Cultural signs shall meet all general restrictions on characteristics for off-premise signs found in ARM 18.6.231.

~~(g)~~(7) A permit must be obtained for each cultural sign accompanied by a nonrefundable ~~application~~ inspection fee ~~as set forth in ARM 18.6.211(1)~~. ~~The~~ There is no initial permit fee or renewal fee for cultural signs ~~required by ARM 18.6.211(2) is waived~~.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed amendments are necessary to reorganize and clarify existing rule language. The proposed new language will organize and clarify all standards for cultural signs for easier access by the public and sign owners.

18.6.245 NONCOMMERCIAL SIGNS (1) Signs displaying noncommercial messages may be erected and maintained adjacent to controlled routes.

~~(1)~~(2) If a noncommercial sign is located on property ~~of~~ owned by the owner of the sign, it shall be ~~considered to be an on-premise sign and not~~ subject ~~to the~~ only to the size, height, and length provisions of this rule.

~~(2)~~(3) A noncommercial sign of a local government may be erected anywhere adjacent to an interstate and primary highway within ~~its~~ the government's territorial or zoning jurisdiction, except in a scenic area or parkland, so long as the sign does not create a safety hazard to the traveling public.

~~(a)~~(4) A noncommercial sign will not be considered in determining the spacing required between conforming, permitted off-premise outdoor advertising signs ~~located off premises~~.

~~(3)~~(5) ~~"Public service"~~ Noncommercial signs shall not:

(a) through (c) remain the same.

(d) be placed outside of zoned or unzoned commercial or industrial areas~~.~~ ;

(e) be located within 500 feet of an intersection in rural areas, or within 140 feet of an intersection in cities or towns;

(f) be located within 500 feet of the gore of an interchange;

(g) be located within 500 feet of any of the following that are adjacent to the controlled route unless the signs are in an incorporated area:

(i) public parks;

(ii) public forests;

(iii) public playgrounds; or

(iv) scenic areas designated as such by the department or other state agency having and exercising this authority;

(6) Noncommercial signs shall meet all general restrictions on characteristics for off-premise signs found in ARM 18.6.231.

~~(4)~~(7) A permit must be obtained for each noncommercial sign not located on property owned by the sign owner. The application must be accompanied by a nonrefundable ~~application~~ inspection fee ~~as set forth in ARM 18.6.211~~. ~~The~~ There is no initial permit fee or renewal fee for noncommercial signs ~~required by ARM 18.6.211 is waived~~.

(8) A nonconforming noncommercial sign may be sold, leased, or otherwise transferred without affecting its status, but its location may not be changed. A nonconforming noncommercial sign removed as a result of an eminent domain acquisition may be relocated along a controlled route, but cannot be reestablished at a new location as a nonconforming use.

(9) Noncommercial signs, regardless of the message, are prohibited along controlled routes unless meeting the requirements of this rule.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed amendment will clarify rule language on noncommercial signs to better notify the public what types of signs and which sign locations are allowed for noncommercial advertising. The new language states that no renewal fee for this type of permit will be required, and that nonconforming signs will be handled the same way for noncommercial signs as for commercial signs.

18.6.246 POLITICAL SIGNS (1) Signs promoting political candidates or issues shall~~:~~

~~(a) Not be erected or maintained within the highway right-of-way.~~ be placed on private property only and cannot be placed without the permission of the property owner.

(2) Political signs shall not:

(a) be placed in the public right-of-way or on public property;

(b) be attached on public right-of-way fences;

(c) obstruct the view of motor vehicle operators or create a traffic hazard;

(d) be located within 500 feet of an intersection at grade along a primary highway, or within 500 feet of an interchange or rest area on the interstate highway system as measured from the beginning of the pavement widening for the interchange;

~~(b)~~(e) ~~Not~~ be erected or maintained prior to 90 days before the applicable election.

~~(c)~~(3) Political signs must be ~~Be~~ removed within 30 days following the applicable election. The department shall notify the landowner of illegal signs which are not removed within 30 days. The signs shall be removed by the department 24 hours after notification to the landowner. The department shall retain removed political signs for five working days after notification of removal before their destruction. The sign owner may retrieve the signs during this period.

~~(2)~~(4) Political signs do not require permits and are not subject to ~~the~~ permit fees ~~set forth in ARM 18.6.211~~.

AUTH: 75-15-121, MCA
IMP: 75-15-111, MCA

REASON: The proposed amendment is necessary to add additional requirements pertaining to political signs. Past abuses of political signs as well as confusion over allowed timing of political signs make this amendment necessary.

18.6.247 OFFICIAL SIGNS (1) Official signs must be erected outside the right-of-way and maintained by a public ~~officer~~ office or agency.

(2) Official signs must be erected within the territorial jurisdiction or zoning jurisdiction of the public ~~officer~~ office or agency~~.~~ , ~~This means~~ such that the ~~officer~~ office or agency must exercise some form of governmental authority over the area upon which the sign is located.

(3) Official signs must be erected pursuant to direction or authorization contained in federal, state, or local law~~.~~ , ~~This means~~ such that the ~~officer~~ office must be directed by statute ~~and/~~or must have the specific authority by statute to erect and maintain signs and notices.

(4) Local governments may erect, within the limits of their jurisdiction, official signs welcoming travelers and describing the services and attractions available, but ~~may not~~ official signs shall not contain any commercial advertising, nor advertise private business or brand names.

(5) Not more than one official sign welcoming visitors or providing information about a community is allowed on each highway entering the community, from each direction of travel, subject to federal and state outdoor advertising control ~~(OAC)~~ rules.

(6) and (7) remain the same.

(8) The maximum area of an official sign shall not exceed 150 square feet.

(9) Signs must not exceed 30 feet in height as measured from a right angle from the surface of the roadway at the centerline of the controlled route, or from a point on the sign structure which is at the same elevation as the crown of the roadway to the top of the highest sign face.

(10) Official signs visible from controlled routes must not be located within 500 feet of an intersection in rural areas, or within 140 feet of an intersection in cities or towns.

(11) Official signs visible from interstate highways must not be located within 500 feet of the gore of an interchange.

(12) Official signs must not be located within 500 feet of any of the following that are adjacent to the controlled route unless the signs are in an incorporated area:

(a) public parks;

(b) public forests;

(c) public playgrounds; or

(d) scenic areas designated as such by the department or other state agency having and exercising this authority.

(13) Official signs shall meet all general restrictions on characteristics for off-premise signs found in ARM 18.6.231.

(14) A permit must be obtained for each official sign accompanied by a nonrefundable inspection fee. There is no initial permit fee or renewal fee for official signs.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed amendment is necessary to clarify some language in the rule for ease of readability. The proposed amendment will also insert language on the requirement of a permit for official signs to avoid confusion on whether or not permits are required for this type of sign.

18.6.248 RECOGNITION OF SPONSORS, BENEFACTORS, AND SUPPORT GROUPS (1) and (1)(a) remain the same.

(b) ~~the~~ a permanent "thank you" display is limited to ~~a~~ three recognition plaques ~~that does not exceed 2% of the total sign face or 1 foot x 36 inches, whichever is less;~~ whose size shall not exceed the size(s) applied for on the permit application and approved by the department;

(c) a changeable reader board display has a maximum display time of 20 minutes during a 14 day period;

(d) remains the same.

(e) the sign owner obtains a permit from ~~MDT~~ the department to display "thank you" recognition~~;~~ and the permit application ~~must include~~ includes the type of display and purpose for the recognition.

(2) A nonprofit owner ~~means~~ includes, but is not limited to schools, churches, or local governments.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed amendment is necessary to clarify the requirements for on-premise, nonprofit signs where permanent thank you and recognition plaques will be included on the sign. The current language restricting the size of the permanent recognition plaques may now vary, upon approval by the department. The proposed amendments will also clarify that thank you messages may be permanent on the plaques and changeable on the reader board itself within the restrictions listed in the rule.

18.6.251 REPAIR OF NONCONFORMING SIGNS (1) As per 75-15-111, MCA, nonconforming signs lawfully in existence prior to April 21, 1995, may be maintained or replaced each year under the following requirements:

(a) a sign may be maintained each year if the value of the materials used in the maintenance does not exceed 75 percent of the value of the materials required to replace the sign new;

(b) the sign may be replaced, if damaged by vandalism, criminal acts, or tortious acts, at up to and including 100 percent of its replacement cost;

(c) the sign replacement must not result in an increase in the area used to display advertising copy nor an increase of height, width, or area over the current dimensions;

(d) the sign may not be illuminated, unless already illuminated before the repair or maintenance;

(e) the sign to be repaired or replaced may not replace wood poles with steel poles.

(2) Nonconforming signs lawfully in existence after April 21, 1995, may be maintained or replaced each year under the following requirements:

(a) a sign may be maintained and repaired if the value of new materials used in the maintenance of a sign during one calendar year does not exceed 30 percent of the value of all the materials which would be required to replace the sign new;

(b) the sign may be replaced if damaged by vandalism, criminal acts, or tortious acts, at up to and including 100 percent of its replacement cost;

(c) the sign replacement may not result in an increase in the area used to display advertising copy nor an increase of height, width, or area over the current dimensions;

(d) the sign may not be illuminated, unless already illuminated before the repair or maintenance;

(e) the sign to be repaired or replaced may not replace wood poles with steel poles.

(3) All changes to nonconforming signs must meet the standards of lawful ordinance, regulation, or resolution of local government and must be approved by the landowner.

(4) Nonconforming signs shall not be maintained or repaired from across the right-of-way control access fences or boundaries.

~~(1)~~(5) Nonconforming signs ~~and signs in conforming areas which do not meet required size, lighting and spacing criteria, as classified by the department prior to April 21, 1995, may be repaired but only in conformity with the following limitations:~~ may be repaired only if

~~(a)~~ such repair and maintenance ~~as~~ is reasonably necessary to maintain the sign's appearance and structural integrity. ~~may be performed. The value of new materials used in the maintenance of a sign during one calendar year may not exceed 30% of the value of all of the materials which would be required to replace the sign new.~~

~~(b)~~(6) ~~Signs~~ Nonconforming signs which are ~~blown down, vandalized, or otherwise damaged may be re-erected provided:~~ destroyed, abandoned, or discontinued may not be re-erected except in instances of vandalism or other criminal or tortious acts.

~~(i) The sign is not damaged in excess of 50% of its replacement cost.~~

~~(ii)~~ The work must be accomplished within ~~six months~~ 60 days or the permit may be ~~canceled~~ revoked.

~~(c) In no case may the repair, maintenance, or re-erection of the nonconforming signs (or signs in conforming areas which do not meet required size, lighting and spacing criteria) result in an increase in the area used to display advertising copy or an increase of height, width, or areas over the height, width or area of the sign when last permitted. In no case may the repair, maintenance or re-erection of a sign result in a substantial upgrading of the type or value of the sign. For example, a change from wood to steel structure or a change from unilluminated to illuminated would constitute a substantial upgrading.~~

(7) Nonconforming signs shall not be relocated from their original permitted location.

~~(d)~~(8) The department shall notify the sign owner of a violation of ~~(c)~~ this rule. The department may allow a permittee who has increased the dimensions or has lighted a previously unlighted nonconforming sign ~~a reasonable time~~ 60 days to restore the sign as originally permitted. If the dimensions are increased or the sign is lighted a second time, the permit will be ~~immediately canceled~~ revoked by the department.

~~(2) As further clarification, signs that meet the statutory requirements of 75-15-111(4), MCA:~~

~~(a) May be maintained each year if the value of the materials used in the maintenance does not exceed 75% of the value of the materials required to replace the sign new; and~~

~~(b) May be replaced, if damaged, at up to and including 100% of its replacement cost.~~

~~(c) May be illuminated.~~

~~(d) May replace wood poles with steel poles provided the size and number of poles remain the same or less.~~

~~(e) Changes must meet the standards of any lawful ordinance, regulation or resolution of local government.~~

~~(f) Any increased sign value resulting from maintenance, repair or illumination as provided in this rule will be deducted if the sign is purchased by the department.~~

~~(3) The limitations set forth in (1) and (2) above are not intended to apply to conforming signs; however, repair or reconstruction of a sign which results in a change in the height, width or area of more than 10% from that shown on the last approved permit application, or which changes the number or position of the facings, will require revision of the existing permit and will be charged the appropriate additional fees. Failure to obtain a revised permit prior to performing the upgrade may result in cancellation of the permit.~~

(9) A nonconforming sign which has displayed obsolete or damaged advertising matter, or has not displayed advertising matter for a period of 45 days subsequent to receipt of written notice from the department, shall be considered as a discontinued sign and shall be removed by the owner without compensation.

(10) Nonconforming signs which are in need of substantial repair either to the face or support structure, and are not repaired within a period of 45 days after

receipt of written notice from the department, shall be considered an abandoned sign and shall be required to be removed by the owner without compensation.

(11) Any increase in nonconforming sign value resulting from maintenance, repair, or illumination as provided in this rule will be deducted if the sign is purchased by the department.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-121, MCA

REASON: The proposed amendment is necessary to reorganize the rule on repair of nonconforming signs to make the language conform to statutory language on allowable percentages of repair and replacement damage. The proposed amendments will also reorganize the rule information to make it easier to read and find necessary information for the public. The proposed amendments will bring Montana rules into compliance with federal regulations.

18.6.262 SIGN STRUCTURES THAT ARE BLANK, ABANDONED, DILAPIDATED, DISCONTINUED, OR IN DISREPAIR ~~(1) Sign structures that have no face or have faces without 100% advertising copy shall be considered blank. Blank is defined as all faces not leased, rented or otherwise occupied by an advertising or public service message. The sign owner is not prohibited from noticing the sign for rent or lease, however, for the purposes of this rule, the sign shall be considered blank while being noticed for rent or lease.~~

~~(2) Sign structures are considered abandoned if the sign structure:~~

~~(a) has not been erected;~~

~~(b) has been removed; and~~

~~(c) the sign owner fails to pay the appropriate sign fees.~~

~~(3) The department may determine a sign is in disrepair if the structure is unsafe or if the sign face is unreadable or not visible to the traveling public.~~

~~(4)~~(1) When the department determines a sign structure has been blank, abandoned, dilapidated, discontinued, or in disrepair for a period of ~~six continuous months~~ 60 days, the department shall notify the sign owner of the violation and require remedial action within 45 days. If such action is not taken, the permit will be ~~canceled~~ revoked and action for the removal of the sign will be taken as provided in 75-15-131, MCA.

(2) A sign is in disrepair if the structure is unsafe or if the sign face is unreadable or not visible to the traveling public.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, 75-15-121, 75-15-131, MCA

REASON: The proposed amendment is necessary to move definitional language from this rule to its proper location in ARM 18.6.202 on definitions. Also, language on "dilapidated" and "discontinued" signs is being added to clarify that those sign conditions are also covered under this rule. The existing rule language on the department's requirements for blank, abandoned, dilapidated, or discontinued signs will remain the same.

18.6.263 VIOLATION OF PROPERTY RIGHTS (1) A permit for any sign which is erected or maintained in violation of the access control fence or line or in violation of any other restrictive easement or property right belonging to the state of Montana or any other subdivision thereof may be ~~summarily canceled~~ revoked by the department.

AUTH: 75-15-121, MCA
IMP: 75-15-121, 75-15-131, MCA

REASON: The proposed amendment is necessary to update rule language on the department's process in terminating a permit.

18.6.264 DETERMINATION OF ILLEGAL OUTDOOR ADVERTISING--NOTICES--CORRECTIVE ACTION--ILLEGAL OUTDOOR ADVERTISING REMOVAL (1) The department may determine outdoor advertising is unlawful or illegal under 75-15-112, MCA, and also when a sign or sign structure is unsafe, insecure, a danger to the public, or has been constructed or is being maintained in violation of the provisions of the Outdoor Advertising Act or this chapter.

(2) If the department determines a permitted or unpermitted sign is in violation of statute or rule, it shall give written notice to the owner or occupant of the land on which the sign is located, and to the owner of the sign, if known. If the sign owner is not known, or has failed to respond to department notices, the department may post notice of the statute or rule violation determination in a conspicuous place on the structure.

(3) The notice shall state the following:

(a) the location and description of the sign, sufficient for identification of the sign;

(b) a statement the department has found the sign to be in violation of statutes or rules on outdoor advertising, along with a general description of the conditions which cause the sign to be in violation;

(c) a determination by the department whether corrective action is possible and required to be taken;

(d) a requirement the corrective action shall be completed within 45 days from the date the notice was posted or received;

(e) notice the sign owner may request a hearing within 45 days to dispute the department's determination of statute or rule violation;

(f) notice the department will issue a default, revoke the permit (on permitted signs), and promptly remove the unlawful sign after 45 days if the corrective action is not completed (if appropriate), or a hearing requested.

(4) The department shall undertake permit revocation action under the Montana Administrative Procedure Act for permitted signs on which unlawful conditions cannot be remedied by corrective action, and shall issue a notice in compliance with (3).

(5) If the condition of a nonpermitted sign cannot be remedied so as to come into compliance with the Outdoor Advertising Act and this chapter, the department shall issue a notice in compliance with (3), and promptly remove the unlawful sign

after 45 days if a hearing is not requested.

(1) and (2) remain the same but are renumbered (6) and (7).

AUTH: 75-15-121, MCA
IMP: 75-15-131, 75-15-132, MCA

REASON: The proposed new rule is necessary to clarify the department's remedies when an illegal sign or sign in violation of outdoor advertising statutes or rules is identified. The department has authority under 75-15-131, MCA, to identify and remove illegal signs, thus a process to accomplish the action is necessary in the administrative rules. This process will allow sign owners to dispute the department's determination of unlawful advertising or correct the deficiencies, if possible, before removal of the sign is commenced.

5. The department proposes to repeal the following rule:

18.6.242 RANCH AND RURAL DIRECTIONAL SIGNS found at ARM page 18-147.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-121, MCA

REASON: The rule is proposed for repeal because it has been combined with ARM 18.6.243 so that only one rule exists on directional signs.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Patrick Hurley, Department of Transportation, P.O. Box 201001, Helena, MT 59620; telephone (406) 444-6068; fax (406) 444-7254; TTY (800) 335-7592; or e-mail phurley@mt.gov, and must be received no later than 5:00 p.m., September 26, 2008.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Patrick Hurley at the above address no later than 5:00 p.m., September 26, 2008.

8. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 196 persons based on the 1958 number of permit holders in the state.

9. The department maintains a list of interested persons who wish to receive

notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lyle Manley, Legal Services, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001; or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Lyle Manley
Lyle Manley
Rule Reviewer

/s/ Nancy Espy
Nancy Espy, Chair
Transportation Commission
Department of Transportation

Certified to the Secretary of State August 18, 2008.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.29.1402, 24.29.1404, 24.29.1406, 24.29.1416, 24.29.1427, 24.29.1430, 24.29.1431, and 24.29.1522, the proposed amendment and transfer of 24.29.1504, and the proposed adoption of NEW RULE I, all related to the workers' compensation medical fee schedule for facilities	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, AMENDMENT AND TRANSFER, AND ADOPTION

TO: All Concerned Persons

1. On September 19, 2008, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in Montana Department of Transportation Auditorium, 2701 Prospect Avenue, Helena, Montana, to consider the proposed amendment, amendment and transfer, and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 12, 2008, to advise us of the nature of the accommodation that you need. Please contact the Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Jeanne Johns, P.O. Box 8011, Helena, MT 59624-8011; telephone (406) 444-7710; fax (406) 444-3465; TDD (406) 444-5549; or e-mail jjohns@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2007 Legislature passed Chap. 330, L. 2007 (HB 738) and Chap. 117, L. 2007 (SB 108). These sections of law require the Department of Labor and Industry to establish administrative rules setting the reimbursement rates for facilities that provide medical services to injured workers. Through this notice, the department is proposing to adopt a Medicare-based fee schedule for workers' compensation reimbursement. The department proposes this approach because Medicare is a nationally recognized system that is already widely used and understood by many health care providers. Further, in comparison to the previously established fee schedule system, the Medicare fee schedule is more uniform because the methodology results in a predictable reimbursement no matter where in the state the injured worker is treated. A Medicare system also provides cost containment because it is based on costs rather than charges. Using this fee schedule would also allow comparison of workers' compensation rates to Medicare and to other commercial payer rates which also use the Medicare methodology.

The department developed proposed NEW RULE I (the Medicare-based fee schedule) following substantial consultations with a leading medical fee schedule developer, INGENIX Corp, representatives from Plan No. 1, No. 2, and No. 3 (including third-party administrators), and representatives of acute care hospitals and ambulatory surgical centers. Proposed NEW RULE I represents what the department believes is an appropriate methodology for a facility fee schedule for the providers and the payors (insurers). The department initially proposed NEW RULE I in MAR Notice No. 24-29-228 on April 24, 2008. After receiving numerous comments from interested persons who requested additional time and who suggested numerous changes, the department decided to delay implementation, change the proposed rule, and renotice the proposed rule. The comment period for interested persons is now based on the proposal as set out below, with the deadline for comments as indicated in this notice.

In addition to proposing a Medicare-based fee schedule, the rules propose to change the terminology where needed in order to clarify that the proposed rules cover all providers that care for an injured worker including ambulatory surgery centers, known as ASCs. Previously, ASCs were not regulated by the fee schedules developed pursuant to the Workers' Compensation Act. As a result, ASCs were being reimbursed at 100 percent of billed charges, which is not comparable with hospital outpatient service reimbursements. The department's general requirement to set fees pursuant to Chapter 330 includes ASCs. In order to clarify that ASCs will be included in the fee schedule, the department proposes to use the term "facility" throughout because the term includes both hospitals and ASCs.

The department has developed the proposed fee schedule to reimburse all facilities based on costs rather than charges for services in order to establish equitable payments across the system rather than budget neutrality on an individual hospital or ambulatory surgery center basis. The department acknowledges individual facilities will experience increases and some will experience decreases. The department believes more efficient hospitals will still be more profitable. The current discount factoring system for hospital facilities did not address equity of reimbursement for services across the state. The department believes the proposed fee schedule is set at 65 percent above Medicare because it used Montana specific workers' compensation data in developing the cost-based system.

The proposed changes clarify that the proposed facility fee schedule uses a Medicare type reimbursement system. However, the proposed schedule is not Medicare's fee schedule and does not include its Prospective Payment System or Medicare's allowable procedures and medications. The department acknowledges Medicare does not allow for some specific treatments. Under workers' compensation law, however, only those medical treatments which have been excluded by rule under ARM 24.29.1526 are not payable. There are currently only three such treatments. Decisions concerning all other treatments should be made by the injured worker's treating physician, taking into consideration reasonableness and the prior authorization rules.

The department believes that there is reasonable necessity to amend, rather than repeal, the existing fee schedule rules despite the fact that some of the rules will be superseded by new rules for services provided on or after November 1, 2008. The department believes that disputes over medical services and fees payable sometimes linger for years, and that payment of old bills can be handled more promptly when the applicable rules are still "on the books."

The department also believes that in some cases, adoption of new rules will be less confusing than merely amending the existing rules and in other cases, amending the existing rules will suffice. Where rules are simply amended, the old version of the rule applies until the amendment takes effect and the new version applies on or after the effective date. The department notes that when new rules are adopted, each will be assigned a unique rule number, which will assist providers, insurers, and the department in making sure that the correct rule is being applied with respect to services furnished on or after the applicability date of the rule. The department believes that the adoption of the proposed new rule makes it more likely that the correct payment is made by the insurer to the provider.

The department is proposing that the amendments and NEW RULE I will apply to discharge dates on or after November 1, 2008.

This general statement applies to all the proposed rules changes, with specific or additional rationales included for each rule.

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

24.29.1402 PAYMENT OF MEDICAL CLAIMS (1) Payment of medical claims ~~shall~~ must be made in accordance with the schedule of ~~nonhospital~~ facility and nonfacility medical fees ~~and the hospital rates~~ adopted by the department.

(2) through (7) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-510, 39-71-704, MCA

REASON: There is reasonable necessity to change the terminology in the rule from "nonhospital medical fees and hospital rates" to "facility and nonfacility medical fees" due to the changes enacted by Chapter 330. The proposed change in terminology clarifies that ASCs will be covered by the new rules. For any services provided before the effective date of the amended rule, ASCs will continue to be reimbursed at 100 percent of charges. Following the effective date of the amendments, ASCs will be reimbursed according to the proposed fee schedule. The department is proposing that the amendments will take effect on November 1, 2008.

24.29.1404 DISPUTED MEDICAL CLAIMS (1) and (2) remain the same.

(3) ~~Hospital~~ Facility records ~~shall~~ must be furnished to the insurer upon request. ~~Hospitals shall~~ Facilities must obtain~~, upon admission,~~ the necessary release by their administrative procedures.

(4) remains the same.

AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-704, MCA

REASON: There is reasonable necessity to change the terminology in the rule due to the changes enacted by Chapter 330. The proposed amendments change the reference from "hospital" records to "facility" records, thereby clarifying the terminology to include not only hospital services, but services provided by an ASC. Because the change is minor and straightforward, the department does not believe it is necessary to propose a new rule with a beginning date to address the issue of including ASCs in the rule's requirements.

24.29.1406 ~~HOSPITAL~~ FACILITY BILLS (1) ~~Hospital~~ Facility bills should be submitted when the injured worker is discharged from the ~~hospital~~ facility or every 30 days.

(2) To the extent possible, electronic billing must be utilized by both providers and payers in the billing and reimbursement process to facilitate the rapid transmission of data, lessen the opportunity for errors, and lessen system costs.

(3) It is the responsibility of the facility to use the proper service codes on any bills submitted for payment. The failure of a provider to do so, however, does not relieve the insurer's obligation to pay the bill, but it may justify delays in payment until proper coding of the services provided is received by the insurer.

(4) Insurers must make timely payments of facility bills. In cases where there is no dispute over liability, the insurer must, within 30 days of receipt of a facility's charges, pay the charges according to the rates established by these rules.

(5) Insurer-initiated medical necessity review, claim audits, and other administrative review procedures may only be conducted on a post-payment basis.

AUTH: 39-71-203, MCA
IMP: 39-71-105, 39-71-107, 39-71-203, 39-71-704, MCA

REASON: There is reasonable necessity to amend this rule to implement changes enacted by Chapter 330. The proposed changes clarify the terminology to include not only hospital services, but services provided by an ASC. In addition, because ARM 24.29.1427 is proposed to have a specific ending date for its applicability, language in (4) which is based on ARM 24.29.1427 is proposed to be added here because it will continue to apply to all services provided. This language naturally falls within the subject of the payment process used for submission and payment of facility bills.

In addition, the rule requires the electronic submission of bills to the extent possible to lessen the errors in the system that have been reported to the department. When medical bills are submitted electronically for inpatient or outpatient hospital or ASC

services, facilities will no longer need to document the billing by attaching documentation in the majority of cases. However, records will continue to be required for providers who bill separately from the facility or when prior authorization of treatment is required. Insurers may require documentation for outpatient procedures performed in the facility when the documentation is not available from another provider. Examples of such documentation are reports from lab work, x-rays, and physical therapy treatments billed by the facility.

Further, the department is considering legislation to allow adoption of Medicare's current code structures and MS-DRGs on an ongoing basis. Currently, due to the prohibition contained in 2-4-307(3), MCA, the department cannot adopt the Medicare system schedules without notice and opportunity for comment through the ARM process. Therefore, the department cannot at this time adopt the Medicare coding changes to occur concurrently with Medicare.

The department notes that numerous vendors have software and groupers available that can be used by everyone. The cost of purchasing software is to be worked out between the providers and payers. It is not necessary for everyone to use the same software, but it will be necessary for the payer's software to "talk to" the provider's software. There are many different groupers that providers and payers may access at no charge. One such grouper is available at www.hospitalbenchmarks.com.

Regarding (4), the department is considering proposing statutory language to include a penalty in the prompt payment provision and to clarify that payments must be made within 30 calendar days of receipt. The department notes that initial liability for acceptance of a claim is the statutory responsibility of the insurer and disputes are addressed through the department's mediation process. The department is unaware of circumstances under the proposed billing system where information would be so incomplete that the payer could not identify an appropriate MS-DRG code in order to process the bill for services.

Regarding (5), the rates proposed by the department assume that prompt payment is made by the insurer to the health care provider because of the time value of money. Numerous providers have indicated to the department that payment is often delayed by insurers. The proposed rules clarify that insurers may continue to dispute medical necessity and conduct other claim audits, but those activities must be conducted on a post-payment basis. If sufficient data are received indicating additional rules are needed to address over and under payments, the department will propose additional rules at a later date.

Finally, there is reasonable necessity to amend the implementation citation to reference two additional statutes, in order to more fully identify those provisions of law which the rule implements. The department believes that the proposed amendments to the rule further implement the public policy of the workers' compensation system as being intended to speedily provide benefits and be self-administering, as well as further defining the obligation of an insurer to promptly handle claims.

24.29.1416 APPLICABILITY OF DATE OF INJURY, DATE OF SERVICE

(1) The amounts of the following types of payments are determined according to the specific department rates in effect on the date the medical service or services are ~~is~~ provided, regardless of the date of injury:

(a) remains the same.

(b) ~~hospital~~ facility charges;

(c) remains the same.

(d) ~~medical equipment and supplies~~ DME.

(2) When services, procedures, or supplies are bundled for purposes of billing and the bundling covers more than one day, the date of discharge must be used as the date the services are provided for purposes of this rule.

AUTH: 39-71-203, MCA
IMP: 39-71-704, 39-71-727, MCA

REASON: There is reasonable necessity to change the terminology in the rule due to the changes enacted by Chapter 330. The rule directs that payments for medical services be determined by the specific department rates in effect on the date the medical service is provided, or the date of discharge when services are bundled that cover more than one day. The proposed amendments change the terminology from hospital to facility in order to include ASCs. The changes also recognize the new bundling payment methodology used with MS-DRG and APC coding. Because the change is minor and straightforward, the department does not believe it is necessary to propose a new rule with a proposed beginning date.

24.29.1427 HOSPITAL SERVICE RULES FOR ~~CLAIMS ARISING ON OR AFTER~~ SERVICES PROVIDED FROM JANUARY 1, 2008, THROUGH OCTOBER 31, 2008 (1) This rule applies to services provided from ~~on or after~~ January 1, 2008, through October 31, 2008.

(2) and (3) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1427 to implement changes enacted by Chapter 330. This proposed change corrects an error in the previous adoption to specify that the rule applies to services provided during the specified timeframe rather than claims arising on or after the specified timeframe. Because NEW RULE I is proposed to direct payment of facility bills on or after November 1, 2008, the proposed changes also set an ending date.

24.29.1430 HOSPITAL RATES FROM JULY 1, 1998, THROUGH JUNE 30, 2001 (1) through (3) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the catchphrase to clarify the dates of applicability of the rule. This proposed change corrects an error in the previous adoption to specify that the rule applies to services provided during the specified timeframe.

24.29.1431 HOSPITAL RATES FROM ~~BEGINNING~~ JULY 1, 2001, THROUGH OCTOBER 31, 2008 (1) through (3) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1431 to implement changes enacted by Chapter 330. NEW RULE I is proposed to direct payment of facility bills on or after November 1, 2008, so the proposed change sets an ending date.

24.29.1522 MEDICAL EQUIPMENT AND SUPPLIES PROVIDED BY A NONFACILITY FOR DATES OF SERVICE ON OR AFTER JANUARY 1, 2008

(1) This rule applies to ~~equipment and supplies~~ DME provided by a nonfacility on or after January 1, 2008.

(2) Except for prescription medicines as provided by ARM 24.29.1529, reimbursement for ~~medical equipment and supplies~~ DME dispensed through a medical provider is calculated by using the RVU listed in the RBRVS times the conversion factor established in ARM 24.29.1538 in effect on the date of service. If a RVU is not listed or if the RVU is listed as null, reimbursement is limited to a total amount that is determined by adding the cost of the item plus the freight cost plus the lesser of either $30.00 or 30 percent of the cost of the item. An invoice documenting the cost of the equipment or supply must be sent to the insurer upon the insurer's request.

(a) remains the same.

(3) If a provider adds value to ~~medical equipment or supplies~~ DME (such as by complex assembly, modification, or special fabrication), then the provider may charge a reasonable fee for those services. Merely unpacking an item is not a "value-added" service. While extensive fitting of devices may be billed for, simple fitting (such as adjusting the height of crutches) is not billable.

(4) remains the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the term "medical equipment and supplies" to "DME" in this rule in order to correspond with the proposed definition changes in ARM 24.29.1504. The definition is proposed to be changed from medical equipment and supplies to DME because DME is the term more commonly referred to by users of these rules. There is also reasonable necessity to clarify in the catchphrase and in the first subsection of the rule that this rule only

applies to nonfacilities. Reimbursement for DME for facilities is covered by NEW RULE I.

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

24.29.1504 (24.29.1401A) DEFINITIONS As used in ~~this~~ subchapters 14 and 15, the following definitions apply:

(1) "Acute care hospital" or "hospital" means a health care facility appropriately licensed by the Department of Public Health and Human Services that provides inpatient and outpatient medical services to injured workers experiencing acute illness or trauma. Acute care hospitals are sometimes referred to as regulated hospitals.

(2) "Ambulatory Payment Classification (APC)" means the reimbursement system adopted by the department for outpatient services.

(3) "Ambulatory surgery center (ASC)" means a health care facility that operates primarily for the purpose of furnishing outpatient surgical services to patients.

(4) "Base rate" means the dollar value which is multiplied by the relative weight of the MS-DRG or APC to determine payment.

(5) "Bundling" means the practice of grouping multiple services, procedures, and supplies into one charge item instead of billing each separately.

(6) "CMS" means the Centers for Medicare and Medicaid Services.

(7) "Correct Coding Initiative (CCI)" means the code edits adopted by the department that are used to correct contradictory billing information.

~~(1)~~ (8) "Current Procedural Terminology~~" or "~~ (CPT)" codes means codes and descriptors of procedures owned, copyrighted, and ~~as~~ published by the American Medical Association.

(2) remains the same but is renumbered (9).

(10) "Durable medical equipment (DME)" means durable medical appliances or devices used in the treatment or management of a condition or complaint, along with associated nondurable materials and supplies required for use in conjunction with the appliance or device. The term does not include an implantable object or device.

(3) and (4) remain the same but are renumbered (11) and (12).

~~(5)~~ (13) "Healthcare Common Procedure Coding System~~" or "~~ (HCPCS)" means the identification system for health care matters developed by the federal government, and includes level one codes, known as CPT codes, and level two codes that were developed to use for supplies, procedures, or services that do not have a CPT code. These codes also include successor codes for CPT and HCPCS established by the American Medical Association and CMS.

(14) "Implantable" means a system of objects or devices that is made either to replace and act as a missing biological structure, to repair or support a biological structure, or to manage chronic disease processes and that is surgically implanted, embedded, inserted, or otherwise applied. The term also includes any related equipment necessary to install, operate, program, and recharge the implantable.

(6) remains the same but is renumbered (15).

(16) "Inpatient services" means services rendered to a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services. Generally, a patient is considered an inpatient if formally admitted as inpatient with the expectation that the patient will remain at least overnight and occupy a bed even though it later develops that the patient can be discharged or transferred to another hospital and not actually use the hospital bed overnight. The physician or other practitioner responsible for a patient's care at the hospital is also responsible for deciding whether the patient should be admitted as an inpatient.

~~(7) "Medical equipment and supplies" means durable medical appliances or devices used in the treatment or management of a condition or complaint, along with associated nondurable materials required for use in conjunction with the device or appliance.~~

(17) "Medicare-Severity Diagnosis Related Group (MS-DRG or DRG)" means the inpatient diagnosis classifications of circumstances where patients demonstrate similar resource consumption, length of stay patterns, and medical severity status that are adopted by the department and are used for billing purposes.

(8) and (9) remain the same but are renumbered (18) and (19).

(20) "Outpatient" means a patient who is not admitted for inpatient or residential care.

(10) through (12) remain the same but are renumbered (21) through (23).

(24) "Ratio of cost to charges (RCC)" means the computed ratio using charges and the hospital's Medicare cost report.

(13) and (14) remain the same but are renumbered (25) and (26).

(27) "Service or services" means treatment including procedures and supplies provided in a facility or nonfacility that is billable under these rules.

(28) "Status indicator (SI)" codes mean CPT codes treated in the same fashion or category, such as packaged services, and apply to outpatient services only.

(15) and (16) remain the same but are renumbered (29) and (30).

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1504 to implement changes enacted by Chapter 330. The proposed amendments add new definitions for terms used in or required by the Medicare rate schedule being proposed in NEW RULE I for services provided by a facility, as those terms are not commonly understood but are an integral part of the proposed fee schedule. The proposed amendments also transfer the rule from subchapter 15 to 14 so that all the definitions apply to both subchapters.

6. The proposed new rule provides as follows:

NEW RULE I FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED ON OR AFTER NOVEMBER 1, 2008 (1) The department adopts the fee schedules provided by this rule to determine the reimbursement amounts for medical services provided at a facility when a person is discharged on or after

November 1, 2008. An insurer is obligated to pay the fee provided by the fee schedules for a service, even if the billed charges are less, unless the facility and insurer have a managed care organization (MCO) or preferred provider organization (PPO) arrangement that provides for a different payment amount. The fee schedules, available on-line via the internet at http://erd.dli.mt.gov/wcregs/medreg.asp, are comprised of the following elements:

(a) The Montana Hospital Inpatient Services MS-DRG Reimbursement Fee Schedule;

(b) The Montana Hospital Outpatient and ASC Fee Schedule Organized by APC;

(c) The Montana Hospital Outpatient and ASC Fee Schedule Organized by CPT/HCPCS;

(d) The Montana Ambulance Fee Schedule;

(e) The Montana CCI Code Edits Listing;

(f) The Montana RCC and other Montana RCC-based Calculations;

(g) The Montana Status Indicator (SI) Codes; and

(h) The base rates and conversion formulas established by the department.

(2) The application of the base rate depends on the date the medical services are provided.

(3) Critical access hospitals and medical assistance facilities are reimbursed at 100 percent of that facility's usual and customary charges.

(4) Any services provided by a type of facility not explicitly addressed by this rule must be paid at 75 percent of its usual and customary charges.

(5) Any inpatient rehabilitation services, including services provided at a long term inpatient rehabilitation facility must be paid at 75 percent of that facility's usual and customary charges. All CMS rehabilitation MS-DRGs are excluded from the Montana MS-DRG payment system and instead are paid at 75 percent of the facility's usual and customary charges regardless of the place of service.

(6) DME, prosthetics, and orthotics, excluding implantables, will be paid at 75 percent of a facility's usual and customary charges.

(7) Facility billing must be submitted on a CMS Uniform Billing (UB-04) form or CMS 1500 form, including the 837-I and 837-P form when submitting electronically.

(8) Hospitals and ASCs must, on an annual basis, submit to the department data reporting Medicare, Medicaid, commercial, unrecovered, and workers' compensation claims reimbursement in a standard form supplied by the department. The department may in its discretion conduct audits of any facility's financial records to confirm the accuracy of submitted information.

(9) Individual medical providers who furnish professional services in a hospital, ASC, or other facility setting must bill insurers separately and must be reimbursed using the nonfacility fee schedule. Those reimbursements are excluded from any calculation of outlier payments.

(10) Facility pharmacy reimbursements are made as follows:

(a) If a facility pharmacy dispenses prescription drugs to an individual during the course of treatment in the facility, reimbursement is part of the MS-DRG or APC reimbursement.

(b) If a patient's medications are not included in the MS-DRG or APC service bundle, the reimbursement will be 75 percent of the facility's usual and customary charges.

(11) The following applies to inpatient services provided at an acute care hospital:

(a) The department may establish the base rate annually.

(i) Effective November 1, 2008, the base rate is $7,735.

(b) Payments for inpatient acute care hospital services must be calculated using the base rate multiplied by the Montana MS-DRG weight. For example, if the MS-DRG weight is 0.5, the amount payable is $3,867.50, which is the base rate of $7,735 multiplied by 0.5.

(c) If a service falls outside of the scope of the MS-DRG and is not otherwise listed on a Montana fee schedule, reimbursement for that service must be 75 percent of that facility's usual and customary charges.

(d) The threshold for outlier payments is three times the Montana MS-DRG payment amount. If the outlier threshold is met, the outlier payment must be the MS-DRG reimbursement amount plus an amount that is determined by multiplying the charges above the threshold by the sum of 15 percent and the individual hospital's Montana operating RCC.

(i) For example, if the hospital submits total charges of $100,000, the MS-DRG reimbursement amount is $25,000, and the RCC is 0.50, then the resultant calculation for reimbursement is as follows: The DRG reimbursement amount ($25,000) is multiplied by 3 to set the threshold trigger ($75,000). The threshold trigger ($75,000) is subtracted from the total charges ($100,000) resulting in the amount above the trigger ($25,000). The amount above the trigger ($25,000) is then multiplied by .65 (which is the RCC of .5 plus .15) to obtain the outlier payment ($16,250). The total payment to the hospital in this example would be the DRG reimbursement amount ($25,000) plus the outlier payment ($16,250) = $41,250.

(ii) The department may establish the inpatient outlier amount annually.

(e) Where an implantable exceeds $10,000 in cost, hospitals may seek additional reimbursement beyond the normal MS-DRG payment. Any implantable that costs less than $10,000 is bundled in the implantable charge included in the MS-DRG payment.

(i) Any reimbursement for implantables pursuant to this subsection must be documented by a copy of the invoice for the implantable.

(ii) Reimbursement is set at a total amount that is determined by adding the actual amount paid for the implantable on the invoice, plus the handling and freight cost for the implantable, plus 15 percent of the actual amount paid for the implantable. Handling and freight charges must be included in the implantable reimbursement and are not to be reimbursed separately.

(iii) When a hospital seeks additional reimbursement pursuant to this subsection, the implantable charge is excluded from any calculation for an outlier payment.

(iv) Because the decision regarding an implantable is a complex medical analysis, this rule defers to the judgment of the individual physician and facility to determine the appropriate implantable. A payer may not reduce the reimbursement when the medical decision is to use a higher cost implantable.

(f) All facility services provided during an uninterrupted patient encounter leading to an inpatient admission must be included in the inpatient stay, except air and ground ambulance services which are paid separately pursuant to the Montana Ambulance Fee schedule.

(g) The following applies to facility transfers when a patient is transferred for continuation of medical treatment between two acute care hospitals:

(i) A hospital transferring a patient is paid as follows: The MS-DRG reimbursement amount is divided by the geometric mean number of days duration listed for the MS-DRG; the resultant per diem amount is then multiplied by two for the first day of stay at the transferring hospital; the per diem amount is multiplied by one for each subsequent geometric mean day of stay at the transferring hospital; and the amounts for each day of stay at the transferring hospital are totaled. If the result is greater than the MS-DRG reimbursement amount, the transferring hospital is paid the MS-DRG reimbursement amount. Associated outliers and add-ons are then added to the payment.

(ii) A hospital receiving a patient is paid the full MS-DRG payment plus any appropriate outliers and add-ons.

(iii) Facility transfers do not include costs related to transportation of a patient to initially obtain medical care. Such reimbursements are covered by ARM 24.29.1409.

(12) The following applies to outpatient services provided at an acute care hospital or an ASC:

(a) The department may establish the base rate for outpatient service at acute care hospitals annually.

(i) Effective November 1, 2008, the base rate for hospital outpatient services is $105.

(b) The department may establish the base rate for ASCs annually.

(i) Effective November 1, 2008, the base rate for ASCs is $79, which is 75 percent of the hospital base rate.

(c) Payments for outpatient services in a hospital or an ASC are based on the Montana APC system. A single outpatient visit may result in more than one APC for that claim. The payment must be calculated by multiplying the base rate times the APC weight. If the APC weight is not listed or if the APC weight is listed as null, reimbursement for that service must be paid at 75 percent of the facility's usual and customary charges. Examples of such services include but are not limited to laboratory tests, radiology, and therapies. If a service falls outside of the scope of the APC and is not otherwise listed on a Montana fee schedule, reimbursement for that service must be 75 percent of that facility's usual and customary charges.

(d) CCI code edits must be used to determine bundling and unbundling of charges. No other clinical editing is allowed to determine bundling and unbundling of charges.

(e) Outpatient medical services include observation in an outpatient status.

(f) Where an outpatient implantable exceeds $500 in cost, hospitals or ASCs may seek additional reimbursement beyond the normal APC payment. In such an instance, the provider may bill CPT code L 8699, and the status indicator code "N" may not be used by a payer to determine the amount of the payment. Any implantable that costs less than $500 is bundled in the APC payment.

(i) Any reimbursement for implantables pursuant to this subsection must be documented by a copy of the invoice for the implantable.

(ii) Reimbursement is set at a total amount that is determined by adding the actual amount paid for the implantable on the invoice, plus the handling and freight cost for the implantable, plus 15 percent of the actual amount paid for the implantable. Handling and freight charges must be included in the implantable reimbursement and are not to be reimbursed separately.

(g) The following applies to patient transfers from an ASC to an acute care hospital:

(i) An ASC transferring a patient is paid the APC reimbursement.

(ii) The acute care hospital is paid the MS-DRG or the APC reimbursement, whichever is applicable.

(iii) Facility transfers do not include costs related to transportation of a patient to initially obtain medical care. Such reimbursements are covered by ARM 24.29.1409.

AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-704, MCA

REASON: There is reasonable necessity to adopt NEW RULE I to implement changes enacted by Chapter 117 and Chapter 330 directing reimbursement for all medical services provided to a workers' compensation patient at a facility. NEW RULE I is proposed to establish payments for services provided by facilities on or after November 1, 2008, by adopting specific fee schedules designed by Medicare. However, due to the prohibition contained in 2-4-307(3), MCA, the department cannot adopt the Medicare system updates as those updates are made. Under the Montana Administrative Procedure Act, in order to adopt those updates the department is required to undertake additional formal rulemaking before those changes can be incorporated into the facility fee schedule. Accordingly, the department is proposing to adopt the Medicare schedules fixed at a certain point in time as indicated by the rule. The schedules chosen are proposed to be called the Montana fee schedules and will be posted on the department's web site. The schedules are intended to match the most recent Medicare update as closely as possible for the initial implementation of the rule.

In addition, there is reasonable necessity to adopt the provisions of NEW RULE I(8) that require providers to report certain cost information to the department. The department believes that such information is needed in order to make sure that the fee schedules do not unfairly cost-shift reimbursement rates, thus resulting in the underpayment or overpayment of costs by workers' compensation insurers. The department will coordinate with the Department of Public Health and Human Services to ensure that requests for data are not duplicated. The department notes that the reporting form for hospitals and ASCs will include information directing the provider to identify any information that the provider considers to be a "trade secret" which is protected from public disclosure under Montana law. The department intends to use the information collected to determine a reasonable method of adjusting the base rates, outliers, and implantable thresholds annually.

In setting the base rates, the department followed 39-71-704(2)(b)(i), MCA. Outliers and implantables are a part of the reimbursement reflected in the base rate level. The department will collect data and evaluate annually to determine whether an adjustment will be necessary to maintain the relative reimbursement rate proposed by this rule. The department considered developing Montana's own relative weights. Employee resource restrictions, however, do not allow developing and maintaining these data at this time. Consequently, the department upon the advice of providers and payers has adopted the Medicare weights. The department notes that although Medicare weights are used in the calculation of the reimbursement, the weights are not adjusted by Medicare's wage-index. The base rates, and the information explaining how the base rates were determined, are posted to the department's web site.

Regarding ASCs, the department believes the reimbursement level set by NEW RULE I is within a reasonable profit level for surgery centers based in part on a statement by a representative of the National Association of ASCs as a formal comment in the rulemaking process in Texas.

Finally, the department modified the definitions of the status indicator (SI) codes to reflect that these are workers' compensation codes rather than Medicare codes.

7. 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: Jeanne Johns, Workers' Compensation Regulation Section Supervisor, Workers' Compensation Regulation Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59624-8011; by facsimile to (406) 444-3465; or by e-mail to jjohns@mt.gov, and must be received no later than 5:00 p.m., September 26, 2008.

8. An electronic copy of this Notice of Public Hearing is available through the department's web site at http://dli.mt.gov/events/calendar.asp, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the

particular subject matter or matters regarding which the person wishes to receive notices. 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.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 738 was notified on May 17, 2007, by regular mail. The primary sponsor of Senate Bill 108 was notified on May 17, 2007, by regular mail.

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

/s/ MARK CADWALLADER	/s/ KEITH KELLY
Mark Cadwallader	Keith Kelly, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 18, 2008

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 36.10.129, Wildland-Urban Interface, and the adoption of New Rule I regarding guidelines for development within the wildland-urban interface	))))))	NOTICE OF PUBLIC HEARINGS ON PROPOSED AMENDMENT AND ADOPTION

To: All Concerned Persons

1. The Department of Natural Resources and Conservation will hold three public hearings at 1:00 p.m. on the following dates: September 18, 2008, in the DEQ Conference Room at 1371 Rimtop Drive, Billings, Montana; September 19, 2008, in the Director's Conference Room at DNRC Headquarters at 1625 Eleventh Avenue, Helena, Montana; and on September 23, 2008, at the Department of Fish, Wildlife, and Parks, Region 2 Headquarters, 3201 Spurgin Road, Missoula, Montana, to consider the amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on September 5, 2008, to advise the agency of the nature of the accommodation that you need. Please contact Pat Cross, Fire Prevention Specialist, Department of Natural Resources and Conservation Fire and Aviation Management Bureau, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4251, fax (406) 542-4242, e-mail pcross@mt.gov.

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

36.10.129 WILDLAND~~/~~-URBAN INTERFACE (1) County governments without subdivision wildfire protection standards are encouraged to establish standards for all new subdivisions by ~~January~~ October 1, 200~~0~~9.

(2) The ~~Fire Protection~~ Guidelines for Development Within the Wildland-~~/Residential~~ Urban Interface ~~Development,~~ (DNRC~~DSL/DOJ~~, ~~1993~~2008)~~,~~ is available for use to assist counties in the development of standards.

(3) Counties that do not adopt Guidelines for Development Within the Wildland-Urban Interface by October 1, 2009, will not be eligible to receive grants or funding assistance from the department for purposes of development in the wildland-urban interface.

AUTH: 76-13-104, MCA
IMP: 76-13-104, MCA

REASONABLE NECESSITY: The amendments are meant to update recent developments in the knowledge associated with development in the wildland-urban interface, and to comply with 76-13-104(8), MCA, which requires the Montana Department of Natural Resources and Conservation to adopt administrative rules addressing development within the wildland-urban interface by October 1, 2008.

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

NEW RULE I WILDLAND-URBAN INTERFACE DEVELOPMENT GUIDELINES (1) The department adopts and incorporates by reference the Guidelines for Development Within the Wildland-Urban Interface (DNRC 2008), which sets forth guidelines that counties may adopt for purposes of development within the wildland-urban interface. A copy of the Guidelines for Development Within the Wildland-Urban Interface (DNRC 2008) may be obtained from the Montana Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620.

AUTH: 76-13-104, MCA
IMP: 76-13-104, MCA

REASONABLE NECESSITY: New Rule I is meant to update recent developments in the knowledge associated with development in the wildland-urban interface. New Rule I is also meant to comply with 76-13-104(8), MCA, which requires the Montana Department of Natural Resources and Conservation to adopt administrative rules addressing development within the wildland-urban interface by October 1, 2008.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Pat Cross, Forest Stewardship Specialist, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4251; fax (406) 542-4241; or e-mailed to pcross@mt.gov, and must be received no later than 5:00 p.m. on September 25, 2008.

6. Ted Mead, Fire and Aviation Management Bureau Chief, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804 has been designated to preside over and conduct the hearings on September 18, 2008, and September 19, 2008. Pat Cross, Forest Steward Specialist, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804 has been designated to preside over the hearing on September 23, 2008.

7. An electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption is available through the department's web site at http://www.dnrc.mt.gov. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption 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.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in (5) above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by regular mail on November 21, 2007.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Mark Phares
MARK PHARES
Rule Reviewer

Certified to the Secretary of State on August 18, 2008.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of establishing a negotiated rulemaking committee relating to public health and safety with respect to alcohol consumption at brewery sample rooms	))))	NOTICE OF NEGOTIATED RULEMAKING

TO: All Concerned Persons

1. The Department of Revenue intends to establish a negotiated rulemaking committee and develop proposed rules relating to public health and safety with respect to alcohol consumption at brewery sample rooms.

2. The proposed rules must establish specific guidelines to clarify the provisions of 16-3-213, MCA, as it pertains to samples provided with or without charge in a Montana brewery sample room, and to clarify the responsibilities of breweries with respect to consumption on their premises and provide state and local regulatory authorities the ability to apply practical and workable standards with regard to brewery sample rooms.

3. Interests that are likely to be significantly affected by the proposed rules are: Montana breweries; private citizens; organizations concerned with public health and safety; local law enforcement agencies; local governments; Montana Department of Justice; and health and human services agencies.

4. The individuals proposed to represent the department on the negotiated rulemaking committee are: C.A. Daw, Chief Legal Counsel; Shauna Helfert, Administrator, Liquor Control Division; and Cleo Anderson, Rules and Policy Officer, Legal Services Office.

5. The department is seeking applications from interested parties to serve on the committee.

6. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to: Cleo Anderson, Department of Revenue, P.O. Box 7701, Helena, Montana 59604-7701, no later than September 29, 2008:

(a) The person's name or the nominee's name, address, and contact information including telephone or fax number or e-mail address.

(b) A description of the interests the person or nominee represents.

(c) Evidence that the person or nominee is authorized to represent parties related to the interests of the persons proposed to be represented.

(d) The relationship of the person or nominee to universal system benefits programs, and the name of the establishment or trade association.

(e) A commitment that the person or nominee will be able to participate in the negotiated rulemaking process as contemplated in paragraph 10 and will actively participate in good faith in the development of the rules under consideration.

(f) The ability of the person or nominee to cover committee participation costs (such as telephone calls, travel, and per diem expenses).

7. Initially, the department proposes to limit the size of the negotiated rulemaking committee to no more than 15 persons. However, after receipt of

comments and applications, the department may determine that a smaller or larger number is necessary to adequately represent the interests of the persons significantly affected by the proposed rules.

8. The Director of Revenue, Dan R. Bucks, will select the committee members from the timely submitted applications. The selected committee members will represent all identified segments of the issues surrounding sample rooms as well as state and local official concerns. The selected committee members may represent other parties or agencies that have a significant relationship with the topic of this rulemaking process.

9. Members of the public and other interested parties not selected to serve on the committee are invited to attend the meetings and may consult with committee members regarding issues and make recommendations of information to be considered.

10. The proposed working schedule for the negotiated rulemaking committee is as follows:

(a) On August 28, 2008, this notice will be published in the Montana Administrative Register (MAR), and in the five major newspapers in Montana. Applications for membership on the negotiated rulemaking committee must be received no later than September 29, 2008. The notice will also be mailed to persons known to the department to have an interest in this matter.

(b) After receipt of the applications, the department will establish a negotiated rulemaking committee no later than October 6, 2008. The members selected to serve on the committee must be able to adequately represent the interests of the persons that will be significantly affected by the proposed rules. The committee members will be notified in writing of their selection. Within 10 days from the notification of selection, the committee members will be sent an information packet.

(c) The negotiated rulemaking committee will convene an organizational meeting on October 30, 2008, to begin negotiating and developing proposed rules. Teleconferencing and e-mail correspondence will be utilized as much as possible but it is anticipated that additional meetings may be necessary. The organizational meeting will convene at 9:00 a.m., the location will be provided when the applicants are selected, Helena, Montana. If possible, the committee will begin drafting the rules at this meeting.

(d) If the negotiated rulemaking committee is successful in achieving a consensus on the proposed rules, the committee will transmit, to the department, a report specifying the areas in which the committee has reached a consensus and the issues that remain unresolved.

(e) Thereafter, and in accordance with Title 2, chapter 4, part 3, MCA (Adoption and Publication of Rules), the department will file with the Secretary of State for publication in the Montana Administrative Register the proposed rules for public health and safety with respect to alcohol consumption.

(f) The department may seek the assistance and advice of the negotiated rulemaking committee with respect to comments received during the formal rulemaking process.

11. Interested parties may submit their views and comments concerning the proposed negotiated rulemaking process to Cleo Anderson, Department of Revenue, P.O. Box 7701, Helena, Montana 59604-7701, no later than September

29, 2008.

12. The department will make reasonable accommodations for persons with disabilities who wish to participate on the committee. If you require an accommodation, please advise the department of the nature of the accommodation you need when applying for membership on the committee.

13. Please note the following concerning the process of negotiated rulemaking:

(a) "Interest" for the purpose of this process means multiple parties that have similar points of view or that are likely to be affected in a similar manner in relationship to matters affected by the rule(s) (2-5-103(5), MCA).

(b) Negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process (2-5-102, MCA).

(c) The negotiated rulemaking committee may not continue to function and must be disbanded after the adoption of the final rule(s) (2-5-106(4), MCA).

14. The specific grant of rulemaking authority authorizing the department to adopt the proposed rules is found in 15-1-201, 15-30-305, and 15-32-407, MCA. The proposed rules will implement 16-3-213 and 16-3-214, MCA.

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

Certified to Secretary of State August 18, 2008.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.10.1806 relating to waste pesticide disposal and recyclable plastic container fees	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 17, 2008, the Montana Department of Agriculture published MAR Notice No. 4-14-175 regarding the above-stated rule at page 1364 of the 2008 Montana Administrative Register, Issue Number 13.

2. The agency has amended ARM 4.10.1806 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ Gregory H. Ames for Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, August 18, 2008.

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

In the matter of the adoption of a temporary emergency rule closing the Canyon Ferry Reservoir, Broadwater County, from the silos to the southern shore	)))))	NOTICE OF ADOPTION OF A TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) has determined the following reasons justify the adoption of a temporary emergency rule:

(a) There is an immediate need for a source of water for aircraft dropping water on the Bear Gulch fire.

(b) Persons recreating on Canyon Ferry Reservoir while aircraft are loading water would be subjected to potential collisions that could result in injury or death. Furthermore, flight crews would be subjected to increased and additional peril if aircraft had to maneuver to avoid recreationists.

(c) ARM 12.11.6601 outlines the Department of Fish, Wildlife and Parks' (department) authority to close public waters due to fire emergency.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the commission adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 16 of the 2008 Montana Administrative Register.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 19, 2008, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail jesnyder@mt.gov.

3. The temporary emergency rule is effective August 19, 2008 when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

<u>RULE I CANYON FERRY RESERVOIR TEMPORARY EMERGENCY CLOSURE</u> (1) The Canyon Ferry Reservoir closure is located in Broadwater County.

(2) Canyon Ferry Reservoir is closed to all boating, floating, and swimming and any other public occupation of the water from the silos to the southern shore of the reservoir.

(3) This rule is effective as long as Canyon Ferry Reservoir is needed as a source of water for fighting wildfires.

AUTH: 2-4-303, 87-1-303, MCA
IMP: 2-4-303, 87-1-303, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule will expire as soon as the department determines the reservoir is again safe for boating, floating, and swimming and any other occupation of the reservoir. This will depend on the extent and duration of wildfires in the area. Signs restricting use of the reservoir will be removed when the rule is no longer in effect. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail jesnyder@mt.gov. Any comments must be received no later than October 2, 2008.

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

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

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

/s/ Robert N. Lane
Robert N. Lane
Rule Reviewer

Certified to the Secretary of State August 19, 2008.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the transfer of ARM 23.8.101 through 23.8.204, relating to criminal history and criminal justice information	))))	CORRECTED NOTICE OF TRANSFER

TO: All Concerned Persons

1. On July 17, 2008, the Department of Justice published a Notice of Transfer in the 2008 Montana Administrative Register at page 1469, issue no. 13, in order to keep topical items together. It has been determined that ARM 23.12.102 through 23.12.204 will not be transferred to ARM 23.8.101 through 23.8.204, but instead will remain as ARM 23.12.102 through 23.12.204. The new numbers will be as follows:

OLD	NEW	
23.8.101	23.12.102	Definitions
23.8.102	23.12.103	Montana Arrest Numbering System Number to be Assigned – CJIN
23.8.103	23.12.104	Fingerprint Card
23.8.104	23.12.105	Criminal Case History and Final Disposition Report
23.8.105	23.12.106	Custodial Fingerprints
23.8.201	23.12.201	Definitions
23.8.202	23.12.202	Public Criminal Justice Information
23.8.203	23.12.203	Initial Offense Reports
23.8.204	23.12.204	Juvenile Records

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

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State on August 18, 2008.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.16.1827 concerning record keeping requirements	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 17, 2008, the Department of Justice published MAR Notice No. 23-16-203 regarding the public hearing on the proposed amendment of the above-stated rule at page 1386, 2008 Montana Administrative Register, Issue Number 13.

2. The Department of Justice has amended ARM 23.16.1827 exactly as proposed.

3. A public hearing was held on August 12, 2008. No adverse comments or suggestions were offered at the public hearing and no changes have been made to the proposed rule.

By:	/s/ Mike McGrath	/s/ Stuart Segrest
	MIKE McGRATH	STUART SEGREST
	Attorney General, Department of Justice	Rule Reviewer

Certified to the Secretary of State August 18, 2008.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

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

TO: All Concerned Persons

1. On July 17, 2008, the department published MAR Notice No. 24-30-230 regarding the proposed amendment of the above-stated rule at page 1388 of the 2008 Montana Administrative Register, Issue Number 13.

2. On August 8, 2008, a public hearing was held in Helena concerning the proposed amendment. No public comments or testimony were received by the closing date of August 15, 2008.

3. The department has amended the above-stated rule as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified by the Secretary of State August 18, 2008

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

In the matter of the adoption of NEW RULES I through XIII pertaining to parimutuel wagering on fantasy sports leagues	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On June 26, 2008, the Board of Horse Racing (board) published MAR Notice No. 32-8-193 regarding the public hearing on the proposed adoption of the above-stated rules at page 1261 of the 2008 Montana Administrative Register, issue no. 12.

2. On July 18, 2008, the board held a public hearing in Helena at which time members of the public made oral comments. Additional comments were received during the comment period.

3. The board has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the board's response to those comments:

Comment 1: Several comments expressed support for the new rules and indicated general support for the design as following House Bill 616 passed during the 2007 regular session of the Montana Legislature.

Response 1: The department acknowledges the comments.

Comment 2: One commenter stated that the proposed rules are consistent with the intent of the authorizing legislation, House Bill 616, and the applicable federal statutes and therefore the proposed rules should be adopted by the Board of Horse Racing to support the economic development of horse racing in the state of Montana.

Response 2: The department acknowledges the comments.

Comment 3: One commenter opined that Montana was being shortsighted in its rules and that it should look at the Nevada model that has a more expansive regulation that permits wagering on competitive tournaments such as poker, billiards, dart tournaments, etc.

Response 3: The department acknowledges the comment and notes that the rules allow the department, with the approval of its Board of Horse Racing, to expand the games that can be part of the parimutuel wagering system.

Comment 4: Several comments noted that the Montana Lottery system seems a logical and effective overseer for fantasy sports.

Response 4: The department acknowledges the comments, and notes that the Montana Lottery is not specifically mentioned in the rules.

Comment 5: Several commenters stated that the original plan was to develop a program to help sustain and revitalize horse racing in Montana, and the new rules seem to be following the intent.

Response 5: The department acknowledges the comments.

Comment 6: One commenter questioned definition number New Rule I(5) "Fantasy sports coordinator". The commenter does not believe that this person should have the ability to select the information service to be used by the network, although the coordinator certainly may be authorized to approve it. The commenter believes this is a network responsibility.

Response 6: Although the department, through the Board of Horse Racing, always has oversight and can give direction to the limits of the coordinator in the selection process, the department will strike the word "select" and substitute the word "approve" in its place.

Comment 7: A comment was received that New Rule I(7) should have more specificity, (what equipment to be used, what propositions allowed) and a definition of parimutuel betting. The commenter thought that while the rules should require specificity, they should also allow for anything else.

Response 7: New Rule I(7) provides the definition for "Fantasy sports parimutuel system" which is a computerized system or component of a system that is used to receive wagering information from and transmit pool data to a parimutuel network. The term parimutuel network is defined in 23-4-101, MCA, as "an association licensed by the board to compile and distribute fantasy sports league rosters and weekly point totals for licensed parimutuel facilities and to manage statewide parimutuel wagering pools on fantasy sports leagues." The term "parimutuel" is defined in the dictionary as a system of betting whereby winnings are divided in proportion to the sums individually wagered. Where the term "parimutuel" is used as a descriptive term in other areas of statute and rules, it is nowhere defined separate from the term it describes. The games as offered must not violate the gambling laws in the design of the wagering. The parameters of parimutuel betting are outlined in 23-4-301, MCA. Therefore there is no need to further define parimutuel wagering and unnecessarily repeat the statutory language. The department believes that if there is a chance it might, in a given circumstance, need more clarification, the department will monitor it at this time and consider clarifying it in the future.

As to comments requesting specification on what equipment can be used and propositions are allowed, New Rule I(7) provides that a fantasy sports parimutuel

system must be a computerized system or component of such a system. While a tote system similar to what is used in horse racing could be used, there would be no reason to limit what type of computer system could be used to calculate winnings if it meets the operations required of a parimutuel network in New Rule III, and a parimutuel hub in New Rule V. Therefore, the department does not believe the rule needs modification.

The commenter further states that propositions should be specified in rule. However, doing so would limit the types of games that could be played. Further the commenter expressed a need for specificity, but then suggested language that rules should allow for "anything else" when defining propositions. Such language would negate the need to provide specific propositions since "anything else" would be allowed. In addition, specifying propositions similar to horse racing (i.e., quinella, exacta, trifecta) would be contrary to any fantasy sports scheme actually conducted in the state between 1989 and 1991 which would thus violate the Professional and Amateur Sports Protection Act of 1992, 28 USC 3704. Therefore, the department does not believe there needs to be more specificity.

Comment 8: A comment was received stating that New Rule I(8) needed a stricter definition for "parimutuel wager".

Response 8: "Fantasy sports parimutuel wager" is defined in New Rule I(8) as a parimutuel wager at a licensed parimutuel facility in Montana, through a fantasy sports league, on professional sporting events offered as part of a common parimutuel pool. It emphasizes the main principles of 1) where a wager can be made, 2) through what league, 3) on what event, and 4) in what manner. Again, the games as offered must not violate the gambling laws in the design of the wagering, and the law has defined parameters on parimutuel betting. Therefore, there is no need to further define parimutuel wagering. The department does not believe a stricter definition is necessary at this time.

Comment 9: A comment was received that there is conflicting language in New Rule I(11) between league rules and board rules. And the commenter noted their opinion that the requirement for 30 days prior approval of league rules makes league rules subject to override by administrative rule.

Response 9: Official league rules are guidelines for each game that are proposed and approved by the fantasy sports coordinator. New Rule VIII(3) is the rule the commenter indirectly referred to in the comments. It provides that the network director shall prepare proposed league rules and submit the proposed rules to the fantasy sports coordinator at least 30 days prior to the beginning of the wagering period. While the parimutuel network names a network director, New Rule I(11) can be amended to refer to the "director". The department will amend New Rule I(11) and add the word "director" in place of "fantasy sports parimutuel" network. However, the department maintains that there can be no actual conflicts between league rules and board rules as proposed. The board is statutorily responsible for fantasy sports operations. Accordingly, the board must exercise this responsibility

by ensuring that all games are within their guidelines and consistent thus, subjecting league rules to board approval.

Comment 10: A comment was received that New Rule I(13) – parimutuel hub, needs more description.

Response 10: The duties of a parimutuel hub are stated in New Rule V. The department maintains that New Rule V expands and adequately describes a parimutuel hub.

Comment 11: One comment was received that New Rule IV(1)(d) Parimutuel network director's requirement to advertise and promote is a business decision that does not need to be part of rules.

Response 11: The purpose of the rules is to provide funding for horse racing. It would go against the legislative intent to have those working within the system not encouraging the public to participate. The department believes it is appropriate to emphasize and direct this specific business need in the rules.

Comment 12: A comment was received that "the" network implies one network and original legislation contemplated more than one network.

Response 12: New Rule III clearly allows for multiple networks. Section (1) provides, "The board may issue parimutuel network licenses to qualified applicants." The use of plural indicates more than one network license may be issued. However, the use of "may" gives the board discretion as to who gets licensed whether or not they are qualified. Therefore, making the grammatical changes suggested by the commenter of changing the word "the" to an "a" would only suggest that multiple parimutuel networks are not permitted.

Comment 13: One comment was that post time being 5 minutes to league time gums up the process and is adequately controlled by functions like starting time and that it did not add anything to the smooth functioning.

Response 13: New Rule VIII(7) states fantasy sports parimutuel wagering shall end promptly five minutes prior to post time for each sporting event, and the machines shall be locked at that time by the parimutuel network. In reviewing the comment, the department agrees it is unnecessary to have it in New Rule VIII(7) and will delete it along with the reference to it in New Rule I(17).

Comment 14: One comment was received that the language indicating that a roster program must be provided to league player should state roster program "must be made available".

Response 14: New Rule VIII(4) language stating "the roster or program must be provided to each league member" will be amended to state "the roster or program must be made available to each league member."

Comment 15: One commenter stated that "betting week" "wagering week" adds a contradiction or level of confusion to the definition of week and should be consistent.

Response 15: New Rule I defines "administrative week" as an upcoming identified weekly period of Wednesday through the following Tuesday. "Administrative week" is defined again in New Rule VIII(3) as "a weekly period of Wednesday through the following Tuesday." "Wagering period" is defined in New Rule I(23) as a period of time as defined by league rule for a single or multiple day event. While the meaning of "administrative week" is consistent throughout, New Rule VIII(3) includes the word "wagering" prior to "administrative week" in the final sentence which may cause confusion with the term "wagering period". Therefore, the department will delete the word "wagering" two times in that paragraph and delete the word "wagering" in NEW Rule IX(8).

Comment 16: One comment was that New Rule V authorizes a fantasy sports parimutuel network to contract with the hub and believe that this was not part of the intent of the Legislature and not in House Bill 616. The commenter believes that the hub usurps the simulcast network facilities function that was defined in House Bill 616.

Response 16: The simulcast parimutuel network comprised of simulcast network facilities is clearly defined in statute 23-4-101(14), MCA. That statute describes exactly how the computerized satellite signals work. Nothing in New Rule V changes the statutory definition. The only way to legally establish the relationship between the company or person that operates and/or owns the main satellite computer system (the hub) and the licensees (facilities) that make up the parimutuel network is to have the licensees sign licensing agreements also known as contracts. New Rule V describes exactly how a licensed parimutuel facility must operate. The rule follows the requirements in the law for a facility operating on a simulcast parimutuel network. The department maintains that no changes are necessary in light of how parimutuel networks must be set up under the law.

Comment 17: One commenter expressed concern that the rules have been drafted in haste and may be subject to federal legal challenges should the federal government become involved and that it mandates an expansion of gambling. Also that the Lottery cannot offer fantasy sports because fantasy sports are in Title 23, chapter 5, part 5, MCA.

Response 17: The department has not drafted the rules in haste and in fact thoroughly reviewed the legal issues the commenter touches upon in their comments.

The department responds that HB 616 and the proposed rules are permissible under both state and federal law. The rules and the potential involvement of the Montana Lottery are not an expansion of an illegal form of gambling. The Montana Board of Horse Racing is authorized by law to provide for fantasy sports leagues and enact

rules that define the parameters for any licensee that will conduct fantasy sports league games on behalf of the board. Sections 23-4-101(6), 23-4-104(12), and 23-5-802, MCA. Fantasy sports must be conducted by a licensee on a system that has been approved by the Board of Horse Racing and meets the requirements for license by board. Fantasy sports leagues in Montana cannot be conducted over the Internet or telephone. Section 23-4-301(8)(c), MCA. (Under federal law fantasy sports leagues are exempted from the Unlawful Internet Gambling Enforcement Act of 2006, 31 USC 5361-5367 (2006). The language in the Gambling Enforcement Act does not preempt state law, but leaves it to the states to determine whether a game or contest is illegal under its laws. The Gambling Enforcement Act Section 5362(1)(E)(ix) explicitly exempts participation in any fantasy sports games from the Act's prohibited gambling activities.

The Montana State Lottery Act of 1985, 23-7-101, MCA permits the lottery to offer a broad range of lottery games. A "lottery game" is defined in 23-7-103(4)(a) and (b), MCA. Section 23-7-103(4)(a), MCA reads: "'Lottery game' means any procedure, including any online or other procedure using a machine or electronic device, by which one or more prizes are distributed among persons who have paid for a chance to win a prize and includes but is not limited to weekly (or other, longer time period) winner games, instant winner games, daily numbers games, and sports pool games."

The definition of a "lottery game" in 23-7-103(4)(b), MCA specifically prohibits the Lottery from offering games that are found in *parts 1 through 5 of Title 23*. The Lottery cannot offer games prohibited by Title 23, chapter 5, part 1, MCA. (Title 23, chapter 5, part 1, MCA, contains the general definitions and prohibitions on certain types of gambling.) Nor can the Lottery offer Calcutta pools governed by Title 23, chapter 5, part 2, MCA; card games regulated by Title 23, chapter 5, part 3, MCA; raffles and bingo games governed by Title 23, chapter 5, part 4, MCA; and any sports pools that are governed by Title 23, chapter 5, part 5, MCA. The only other limitations on any lottery game are in 23-4-301(8)(a) and (b), MCA. Sections 23-4-301(8)(a) and (b), MCA, require fantasy sports to be offered on a parimutuel system and not through pool selling or bookmaking and it cannot sell to minors.

The definition of "lottery game" includes fantasy sports because it meets all the requirements of the defined games that may be created by the Lottery. Parimutuel games for fantasy sports can be played "…using a machine or electronic device, by which one or more prizes are distributed among persons who have paid for a chance to win a prize and includes but is not limited to weekly (or other, longer time period) winner games, instant winner games, daily numbers games, and sports pool." Also, fantasy sports are not within the specific exclusions in the lottery game definition.

The Board of Horse Racing was given very broad authority to write rules defining much of the structure for fantasy sports. In the course of doing the rules, the Board of Horse Racing has entered into a legal Memorandum of Understanding with the Lottery to have the Lottery act as the parimutuel network. The game(s) that Board of Horse Racing is having the Lottery develop and launch do not have fixed odds. It is

important not to confuse "sports pools" as defined in Title 5, chapter 5, part 5, MCA, with fantasy sports that are authorized by Title 23, chapter 5, part 8, MCA. Fantasy sports are covered in part 8, not part 5. Congress has always left the issue of what gambling or gaming activities are legal in the fifty states to each state to provide for under its laws. 15 USC 3001. The only the types of gambling and gambling activity allowed for in Montana are in Title 23.

Since Congress exempted fantasy sports for the Gambling Enforcement Act, federal courts have issued decisions giving maximum protection to fantasy sports gaming in spite of a variety of challenges to it. In a 2007 federal district court case the court ruled that fantasy sports is not gambling. In *Humphrey v. Viacom, Inc.*, *et. al*. 2007 U.S. Dist. Lexis 44679, a challenge was brought that the defendants had unlawfully expanded gambling in violation of New Jersey state law. The court concluded that fantasy sports was not an illegal expansion of gambling. It required a degree of skill and it was far removed from what the gambling statutes were intended to regulate. *Humphrey v. Viacom, Inc.*, *et. al*. 2007 U.S. Dist. Lexis ¶¶ 24, 31.

More recently, the U.S. Supreme Court declined to hear the appeal by the National Football League Players Association in a case entitled *C.B.C. Distrib. & Mktg v. Major League Baseball Advanced, L.P*, (8th Cir., Mo., 2007) 505 f.3d 818, 2007 U.S. App. LEXIS 24192, *cert. denied* 2008 U.S. 4574; 76 U.S.L.W. 3636. Central to the case was the right of the seller to use the players' names in the fantasy sports games after a licensing agreement with the players expired. Ultimately, the players lost because their names were already in the public domain.

Passage of the Unlawful Internet Gambling Enforcement Act of 2006, with its exemption for fantasy sports, and the analysis in the federal cases, make any successful attack on fantasy sports under another federal law unlikely. That law is the federal Professional and Amateur Sports Act (PASPA). The legality of Montana's fantasy sports activity partially turns on the section within PASPA on "applicability." Essentially that section grandfathered active sports gambling that existed before PASPA's passage. 28 USC 3704. Montana certainly had limited sports betting prior to passage of PASPA. Montana (together with Nevada, Oregon, and Delaware) is recognized as a state that offered sports gambling prior to PASPA's passage. Consequently, some forms of Montana sports gambling are exempted from PASPA's general prohibition.

The Professional and Amateur Sports Protection Act was Congress' attempt at curbing sports gambling which could erode the integrity of sporting contests and expose players to influence by unscrupulous elements. The operative portion of the bill is 28 USC 3702. Professional sports associations have been vocal opponents of sports gambling because of the threat gambling poses to the public's perception of the integrity of the contests and because of the threat of pressure upon athletes or officials to affect the outcome of contests. In the parimutuel system set up under fantasy sports in Montana and elsewhere, undue influence is a not a possibility because a fantasy team requires a minimum of two players and is not based on the outcome of the actual sports game.

Comment 18: A second commenter believed that fantasy sports are authorized by Title 23, chapter 5, part 5, MCA, thereby prohibiting the Montana Lottery's involvement with the Board of Horse Racing.

Response 18: Fantasy sports is not covered in Title 23, chapter 5, part 5, MCA. Fantasy sports is covered in Title 23, chapter 5, part 8, MCA.

Comment 19: One comment was received that New Rule II and New Rule IV address the licensing and duties of the parimutuel network director that each parimutuel network must name. The comment was that House Bill 616 does not require each parimutuel network to have a director.

Response 19: Section 23-4-104, MCA gives the Board of Horse Racing broad rulemaking authority over how fantasy sports and fantasy sports betting would actually operate. The board is charged with promulgating rules that govern how fantasy sports would be implemented. New Rule II and New Rule IV merely require that each licensee have a person designated, i.e., named as the parimutuel network director for that licensee. Practically it would be impossible to operate the network without knowing who speaks for the licensee as a responsible party. The department maintains that the new rules are within the scope of the board's statutory authority.

Comment 20: One comment was that in 23-4-104, MCA there is not a grant of authority allowing the Board of Horse Racing to create license positions in the fantasy sports area.

Response 20: Section 23-4-104(12), MCA must be read in conjunction with 23-4-101(10) and (11), MCA and 23-4-201(8), MCA clearly requiring the Board of Horse Racing to license parimutuel facilities and systems in the fantasy sports area.

Comment 21: One comment was that the proposed rules are undertaking actions that are beyond the grant of rulemaking authority, thereby violating MAPA and also do not conform with the sponsor's Rep. McChesney, or the 2007 Legislature's intent in passing House Bill 616.

Response 21: The department maintains that the heart of this comment was in the context of the comments directed at the potential for the Montana Lottery to partner with the Board of Horse Racing and the mistaken belief that the Montana Lottery could not offer fantasy sports games. The department maintains that the concern about going beyond the sponsor or Legislature's intent, and therefore MAPA with its rules, is without any legal basis. The department addressed this issue in Responses numbered 17, 18, and 22.

Comment 22: One comment was that there is clearly no intent manifested in House Bill 616 by the Legislature to show that participation by the State Lottery was ever contemplated.

Response 22: The department believes that House Bill 616 appropriately does not favor any particular individual, entity, or vendor over another, nor were the rules targeted at any singular individual, entity, or vendor. The department believes House Bill 616 does not preclude the Montana Lottery; if it had been intended to do so it would have added fantasy sports to the list of excluded activities listed in 23-7-103(4)(b), MCA.

4. The department has adopted the following new rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (32.28.2201) DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Administrative week" means an upcoming identified weekly period of Wednesday through the following Tuesday.

(2) "Board" means the Montana Board of Horse Racing provided for in 2-15-3106, MCA.

(3) "Breakage" means the odd cents over a multiple of ten cents arising from the computation of odds and payoffs on parimutuel fantasy sports wagers.

(4) "Common parimutuel pool" means a parimutuel wagering pool consisting of the parimutuel fantasy sports wagers placed at two or more licensed parimutuel facilities in Montana.

(5) "Fantasy sports coordinator" means an official hired by the Department of Livestock (the department) to regulate, audit, approve network operating plans, approve league rules, receive point totals from network, designate point totals as "official," annually ~~select~~ approve the information service to be used by the network, and control and supervise overall conduct and operation of parimutuel fantasy sports wagering.

(6) "Fantasy sports league" has the meaning found at 23-5-801, MCA.

(7) "Fantasy sports parimutuel system" means a computerized system or component of a system that is used to receive wagering information from and transmit pool data to a parimutuel network.

(8) "Fantasy sports parimutuel wager" means a parimutuel wager at a licensed parimutuel facility in Montana, through a fantasy sports league, on professional sporting events offered as part of a common parimutuel pool.

(9) "Information service" means a person or entity chosen annually by the fantasy sports coordinator to sell or provide information to the licensed fantasy sports parimutuel network, from among those services providing statistics from the individual sport's sanctioning body, and gather statistics on professional team and individual performances, which information is used to create rosters or programs of available professional sports players and teams.

(10) "League member" means a person at least 18 years of age who participates in fantasy sports parimutuel wagering at a Montana-licensed fantasy sports parimutuel facility. The term does not include a corporation, partnership, limited liability company, trust, estate, or any other entity.

(11) "Official league rules" means a set of operating guidelines and requirements proposed by the ~~fantasy sports parimutuel~~ network director and subsequently approved by the fantasy sports coordinator, to govern selection of individual sport, selection of players, method of point calculation or scoring, and other information within parameters set by board rule. The rules must be available to each league member and provided upon request. Each set of official league rules must be approved by the fantasy sports coordinator and made official before being used by the network or a parimutuel facility.

(12) "Parimutuel facility" has the meaning found in 23-4-101, MCA, as a facility licensed by the board at which fantasy sports leagues are conducted and wagering on the outcome under a parimutuel system is permitted. In addition, the parimutuel facility must be licensed pursuant to the provision of Title 23, chapter 4, MCA, and ~~[NEW RULE VI]~~ ARM 32.28.2206.

(13) "Parimutuel hub" means a system to which the parimutuel network will be connected, and which monitors all fantasy sports parimutuel wagering in Montana.

(14) "Parimutuel network" has the meaning found at 23-4-101, MCA, as an association licensed by the board to compile and distribute fantasy sports league rosters and weekly point totals for licensed parimutuel facilities and to manage statewide parimutuel wagering pools on fantasy sports leagues. In addition, the term includes a person engaged in providing the parimutuel fantasy sports system or service directly related to the reconciliation of a common fantasy sports parimutuel pool and transfer of funds between the participating fantasy sports parimutuel facilities. A parimutuel network must be physically located in Montana and operated in Montana.

(15) "Parimutuel network director" means a person or office licensed by the board to solicit facility sites for the network, provide equipment to connect to the parimutuel hub, verify all takeout amounts are collected from the facilities and distributed to the board, advertise, promote, select individual fantasy sports games in which the network may participate, and calculate point totals for professional players or teams based on previously-defined rules for award of points.

(16) "Pool data" means data regarding the results, payoffs, odds or payoff prices, and the aggregate amount of parimutuel fantasy sports wagers accepted on each professional sporting event by all parimutuel fantasy sports facilities.

~~(17) "Post time" means five minutes before the scheduled start of a professional sporting event or such other time as designated by league rule.~~

~~(18)~~(17) "Roster" or "program" means a list of eligible professional sports participants for the appropriate period; eligible specific professional sports races, games, matches, or contests for the appropriate period; and types of combination wagers eligible to be placed for that sport in that period. The roster or program must be prepared by the Montana licensed parimutuel network for fantasy sports, and must be provided to each league member.

~~(19)~~(18) "Sporting event" means an individual race, game, match, or contest, and any group, series, or part thereof from a given professional sport. The term does not include horse or dog races.

~~(20)~~(19) "Takeout" means an amount retained and not returned to patrons by a licensed parimutuel fantasy sports facility from the aggregate amount of parimutuel fantasy sports wagers.

~~(21)~~(20) "Team" means a fictitious team of not less than two players composed of athletes from a given professional sport.

~~(22)~~(21) "Wagering information" means the amount of parimutuel fantasy sports wagers accepted for each sporting event by a single parimutuel fantasy sports facility.

~~(23)~~(22) "Wagering period" means a period of time as defined by league rule for a single or multiple day event.

AUTH: 23-4-104, MCA
IMP: 23-4-101, 23-4-104, 23-4-201, 23-4-202, 23-4-301, 23-4-302, 23-4-304, 23-5-801, 23-5-802, 23-5-805, 23-5-806, MCA

NEW RULE VIII (32.28.2208) GENERAL CONDUCT OF FANTASY SPORTS PARIMUTUEL WAGERING (1) The network director shall prepare proposed league rules for each sporting event on which the network will offer parimutuel wagering during a designated wagering period. The proposed league rules shall include:

(a) a description of the eligible specific professional sports races, games, matches, or contests on which parimutuel wagering will be allowed;

(b) types of combination wagers eligible to be placed for a sport under league rules in any parimutuel wagering period; and

(c) a list of eligible professional sports participants for the appropriate period.

(2) The parimutuel network director shall submit the proposed league rules to the board's fantasy sports coordinator for approval at least 30 days prior to the wagering period during which the sporting event will occur or during which parimutuel wagering will be allowed under those league rules. No league rules shall be provided by the network to the hub, facility, or wagering public before the league rules are approved by the fantasy sports coordinator and made official.

(3) The parimutuel network director shall select one or more sporting events, from among the sets of official league rules approved by the fantasy sports coordinator, on which parimutuel wagering will be conducted during an upcoming administrative week, identified as a weekly period of Wednesday through the following Tuesday. The network director shall notify the fantasy sports coordinator in writing at least one week prior to the appropriate ~~wagering~~ administrative week as to which sporting events under official league rules will be included in each particular ~~wagering~~ administrative week.

(4) The parimutuel network shall compile a roster or program for the appropriate period, including eligible specific professional sports races, games, matches, or contests for the appropriate period, types of combination wagers eligible to be placed for that sport in that period, and a list of eligible professional sports participants. The roster or program must be ~~provided~~ made available to each league member. The roster or program shall be placed into the parimutuel computer system for the appropriate periodic start date.

(5) Each periodic sporting event roster or program must be provided by the network to each licensed parimutuel facility. Each periodic sporting event roster or program must also be provided to the parimutuel wagering public. The roster or program must be provided in hard copy, but may also be available via an Internet site.

(6) Fantasy sports parimutuel wagering shall be conducted within the appropriate wagering period for each sporting event for which league rules have been made official by the coordinator, and which has been chosen and is being offered by the network under its periodic roster or program.

~~(7) Fantasy sports parimutuel wagering shall end promptly five minutes prior to post time for each sporting event, and the machines shall be locked at that time by the parimutuel network.~~

~~(8)~~(7) While the sporting events are underway, a running total of points may be calculated by the information service and provided by the networks to the network facilities via Internet or other means.

~~(9)~~(8) When each individual sporting event is concluded, the network, through its information service, shall calculate point totals. Based on the point totals, the official winners are declared, and made official by the fantasy sports coordinator. Any error in point calculations discovered after the point totals are made official by the coordinator shall be disregarded. The point totals shall be promptly provided to the parimutuel hub. Winning tickets may be cashed at any time after the sports event results are made official.

~~(10)~~(9) At the conclusion of each periodic sporting event, the hub shall send reconciliation statements showing amounts handled on each individual sports event to the parimutuel facilities, parimutuel network, and the fantasy sports coordinator.

~~(11)~~(10) The parimutuel network shall remit the correct takeout amount from all parimutuel facilities to the board within seven days after the conclusion of each administrative week. The remitted amount shall not include breakage or unclaimed ticket amount takeout.

~~(12)~~(11) The board shall distribute the takeout amount as per 23-4-302, MCA.

AUTH: 23-4-104, 23-4-202, MCA
IMP: 23-4-202, 23-4-302, 23-4-304, 23-5-801, 23-5-805, MCA

NEW RULE IX (32.28.2209) FANTASY SPORTS PARIMUTUEL OPERATIONS (1) Wagering will only be permitted at a licensed fantasy sports parimutuel facility by means of a parimutuel system that has been approved by the board.

(2) No employee of the parimutuel network, parimutuel director, parimutuel facility, or hub operations may place a wager for the employee personally or any other person during the actual work period for which the employee is licensed as a parimutuel occupational employee.

(3) Any claim by a patron that a wrong ticket has been delivered must be made before leaving that parimutuel ticket window or parimutuel self service machine. No claim shall be considered after that time, and no claim shall be considered for tickets that are discarded, lost, changed, destroyed, or mutilated

beyond identification. Payment will be made only upon presentation of appropriate parimutuel tickets.

(4) The parimutuel facility licensee shall not sell or cash parimutuel tickets to persons under 18 years of age. Signs indicating that persons under age 18 are not allowed to wager shall be conspicuously displayed near the selling and cashing windows.

(5) The parimutuel facility shall ensure that all parimutuel tickets sold on a sporting event during an administrative week are purchased or cashed from the regular ticket windows or parimutuel self service machine.

(6) All parimutuel facility employees working with parimutuel selling machines must be licensed by the board and given instructions by the facility manager, network director, or their designee prior to the start of their duties.

(7) The parimutuel facility shall make available to the public the actual winning amount to be paid for each winning ticket after results are made official.

(8) A parimutuel facility shall complete all forms summarizing each ~~wagering~~ administrative week's mutuel operations, and verification of the payoff computations, and completion of such other forms as may be required by the network director or fantasy sports coordinator.

(9) The parimutuel network shall ensure payouts, pool totals, and winning combinations for each fantasy sports event are available to the public at each licensed parimutuel facility after the official results have been posted.

(10) The parimutuel facility shall conspicuously display rules at its licensed premises which govern wagering transactions with patrons. The rules must specify takeout amounts, the amounts to be paid on winning wagers, and the redemption period for winning tickets.

(11) The parimutuel network and network director are responsible for the accuracy of all payoff prices.

(12) The parimutuel network director shall prepare or have prepared a parimutuel recapitulation form at the end of each administrative week. The recapitulation form shall be provided to the fantasy sports coordinator or the board.

(13) The parimutuel network licensee may be required to furnish a certified public accountant, licensed to practice in Montana, with the following duties:

(a) completion of the forms summarizing each week's ~~mutual~~ mutuel operation;

(b) verification of the payoff computations;

(c) completion of such other forms as may be required by the board; and

(d) submission of financial statements covering parimutuel operations for the fiscal year.

(14) The parimutuel network director must verify deposit of all receipts and submit statements showing parimutuel receipts, percentages retained, and such other information as may be required for the proper administration of the law to the fantasy sports coordinator and the board. The information shall be submitted within seven days after the close of the fantasy sports administrative week.

(15) The parimutuel network shall report to the fantasy sports coordinator and the board the total face value of all unclaimed winning tickets quarterly.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-202, 23-4-302, 23-4-304, 23-5-801, 23-5-805, MCA

5. The board has adopted NEW RULE II (32.28.2202), NEW RULE III (32.28.2203), NEW RULE IV (32.28.2204), NEW RULE V (32.28.2205), NEW RULE VI (32.28.2206), NEW RULE VII (32.28.2207), NEW RULE X (32.28.2210), NEW RULE XI (32.28.2211), NEW RULE XII (32.28.2212), and NEW RULE XIII (32.28.2213) as proposed.

BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK

BY: /s/ SHERRY K. MEADOR
Sherry K. Meador
Alternate Rule Reviewer

BY: /s/ CHRISTIAN MacKAY
Christian Mackay, Executive Director
DEPARTMENT OF LIVESTOCK

Certified to the Secretary of State on August 18, 2008.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.12.102, Forms, 36.12.103, Form and Special Fees, 36.12.115, Water Use Standards, and the repeal of ARM 36.12.108, Public Notice Costs	)))))	NOTICE OF AMENDMENT AND REPEAL

To: All Concerned Persons

1. On July 17, 2008, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-130 regarding a notice of public hearing on the proposed amendment and repeal of the above-stated rules at page 1413 of the 2008 Montana Administrative Register, Issue No. 13.

2. The department has amended ARM 36.12.102, 36.12.103, and 36.12.115 as proposed and repealed ARM 36.12.108 as proposed.

3. No comments or testimony were received.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Candace F. West
CANDACE F. WEST
Rule Reviewer

Certified to the Secretary of State August 18, 2008.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 42.13.601 relating to small brewery restrictions	)))	NOTICE OF DECISION ON PROPOSED RULE ACTION

TO: All Concerned Persons

1. On July 17, 2008 the Department of Revenue published MAR Notice No. 42-2-795 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1450 of the 2008 Montana Administrative Register, issue no. 13.

2. A public hearing on the notice of proposed amendment of the above-stated rule was held on August 7, 2008. Written and oral comments were received.

3. In light of the comments received, the department has decided not to amend ARM 42.13.601 as originally proposed. The department is convening a negotiated rulemaking committee to address small brewery restrictions. MAR Notice No. 42-2-798, the Notice of Negotiated Rulemaking on this subject, can be found in the Notice section of this issue of the Montana Administrative Register.

4. The other rules proposed for adoption and amendment in MAR Notice No. 42-2-795 remain active and will be finalized in a later issue of the Montana Administrative Register.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to the Secretary of State August 18, 2008.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.620, 42.20.625, and 42.20.680 relating to real property and agricultural land	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 26, 2008, the department published MAR Notice No. 42-2-794 regarding the proposed amendment of the above-stated rules at page 1301 of the 2008 Montana Administrative Register, issue no. 12.

2. A public hearing was held on July 18, 2008, to consider the proposed amendment. No one appeared at the hearing to testify and no written comments were received.

3. The department amends ARM 42.20.620, 42.20.625, and 42.20.680 as proposed.

4. An electronic copy of this Adoption Notice 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 Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State August 18, 2008.

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 P.O. 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 June 30, 2008. This table includes those rules adopted during the period July 1, 2008, through September 30, 2008, 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 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 June 30, 2008, 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 2007 and 2008 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

GENERAL PROVISIONS, Title 1

1.3.101	and other rules - Secretary of State's Model Rules, p. 1003, 1593
1.3.211	and other rules - Attorney General's Model Rules, p. 988, 1700

ADMINISTRATION, Department of, Title 2

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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 represent ation 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 vac ancies on those boards and councils.

In this issue, appointments effective in July 2008 appear. Vacancies scheduled to appear from September 1, 2008, through November 30, 2008, are listed, as are curr ent vacancies due to resignations or other reasons. Individuals interested in servin g on a board should refer to the bill that created the board for details about the numb er 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 fol lowing lists are current as of August 1, 2008.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to ser ve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM JULY 2008

Appointee	Appointed by	Succeeds	Appointment/End Date
Agriculture Development Council (Agriculture)			
Mr. Bill Koenig	Governor	reappointed	7/17/2008
Kalispell			7/1/2011
Qualifications (if required): agriculture producer			
Ms. Patricia Quisno	Governor	reappointed	7/17/2008
Harlem			7/1/2011
Qualifications (if required): agriculture producer			
Mr. David Tyler	Governor	reappointed	7/17/2008
Belgrade			7/1/2011
Qualifications (if required): agriculture producer			
Board of Banking (Administration)			
Ms. Carolyn Colman	Governor	reappointed	7/1/2008
West Yellowstone			7/1/2011
Qualifications (if required): public representative			
Mr. John King	Governor	reappointed	7/1/2008
Kalispell			7/1/2011
Qualifications (if required): state bank officer of a small size bank			
Board of Funeral Service (Labor and Industry)			
Mr. William Cronin	Governor	Lowry	7/1/2008
Havre			7/1/2013
Qualifications (if required): mortician			

BOARD AND COUNCIL APPOINTEES FROM JULY 2008

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Pharmacy (Labor and Industry)			
Ms. Frances Carlson	Governor	Bernica	7/1/2008
Great Falls			7/1/2013
Qualifications (if required): public representative			
Ms. Rebekah Matovich	Governor	Cloud	7/1/2008
Billings			7/1/2013
Qualifications (if required): pharmacy technician			
Board of Regents (Higher Education)			
Mr. Mitchell Jessen	Governor	Melvin	7/1/2008
Dillon			6/30/2009
Qualifications (if required): student			
Consumer Settlement Advisory Council (Attorney General)			
Mr. Hubert Abrams	Attorney General	not listed	7/10/2008
Wibaux			7/10/2010
Qualifications (if required): none specified			
Ms. Ali Bovingdon	Attorney General	not listed	7/10/2008
Helena			7/10/2010
Qualifications (if required): none specified			
Mr. Matthew Dale	Attorney General	not listed	7/10/2008
Helena			7/10/2010
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM JULY 2008

Appointee	Appointed by	Succeeds	Appointment/End Date
Consumer Settlement Advisory Council (Attorney General) cont.			
Rep. Eve Franklin	Attorney General	not listed	7/10/2008
Helena			7/10/2010
Qualifications (if required): none specified			
Rep. Bill Thomas	Attorney General	not listed	7/10/2008
Hobson			7/10/2010
Qualifications (if required): none specified			
Ms. Tara Veazey	Attorney General	not listed	7/10/2008
Helena			7/10/2010
Qualifications (if required): none specified			
District Court Council (Justice)			
Judge Katherine "Kitty" Curtis	District Court	reappointed	7/1/2008
Columbia Falls			6/30/2011
Qualifications (if required): none specified			
Judge John C. McKeon	District Court	reappointed	7/1/2008
Malta			6/30/2011
Qualifications (if required): none specified			
Mr. Jim Reno	District Court	reappointed	7/1/2008
Billings			6/30/2011
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM JULY 2008

Appointee	Appointed by	Succeeds	Appointment/End Date
District Court Council (Justice) cont.			
Ms. Glenda Travitz	District Court	reappointed	7/1/2008
(City not listed)			6/30/2011
Qualifications (if required): none specified			
Electrical Board (Labor and Industry)			
Mr. Jack Fisher	Governor	reappointed	7/1/2008
Butte			7/1/2013
Qualifications (if required): licensed electrician			
Historical Records Advisory Board (Historical Society)			
Mr. Jordan Goffin	Governor	McCrea	7/30/2008
Missoula			8/29/2009
Qualifications (if required): public representative			
Information Technology Managers' Advisory Council (Administration)			
Mr. Mike Bousliman	Director	not listed	7/1/2008
Helena			7/1/2010
Qualifications (if required): Department of Transportation representative			
Mr. Rick Bush	Director	not listed	7/1/2008
Helena			7/1/2010
Qualifications (if required): Department of Natural Resources and Conservation representative			
Mr. Dick Clark	Director	not listed	7/1/2008
Helena			7/1/2010
Qualifications (if required): Department of Administration representative			

BOARD AND COUNCIL APPOINTEES FROM JULY 2008

Appointee	Appointed by	Succeeds	Appointment/End Date
Information Technology Managers' Advisory Council (Administration) cont.			
Mr. Joe Frohlich	Director	not listed	7/1/2008
Hamilton			7/1/2010
Qualifications (if required):	Ravalli County representative		
Mr. Mike Jacobson	Director	not listed	7/1/2008
Helena			7/1/2010
Qualifications (if required):	Department of Justice representative		
Ms. Tammy LaVigne	Director	not listed	7/1/2008
Helena			7/1/2010
Qualifications (if required):	Department of Labor and Industry representative		
Mr. Mark Van Alstyne	Director	not listed	7/1/2008
Helena			7/1/2010
Qualifications (if required):	Secretary of State representative		
Montana Council on Developmental Disabilities (Commerce)			
Ms. Sarah Casey	Governor	reappointed	7/30/2008
Helena			1/1/2009
Qualifications (if required):	agency representative		
Mr. Roger Holt	Governor	reappointed	7/30/2008
Billings			1/1/2009
Qualifications (if required):	advocacy representative		

BOARD AND COUNCIL APPOINTEES FROM JULY 2008

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Council on Developmental Disabilities (Commerce) cont.			
Rep. Carol Lambert Broadus Qualifications (if required): legislator	Governor	reappointed	7/30/2008 1/1/2009
Director Joan Miles Helena Qualifications (if required): agency representative	Governor	reappointed	7/30/2008 1/1/2009
Ms. Diana Tavary Helena Qualifications (if required): secondary consumer representative	Governor	reappointed	7/30/2008 1/1/2012
Dr. R. Timm Vogelsberg Missoula Qualifications (if required): advocacy program representative	Governor	reappointed	7/30/2008 1/1/2012
Sen. Carol Williams Missoula Qualifications (if required): legislator	Governor	reappointed	7/30/2008 1/1/2009
Teachers' Retirement Board (Administration)			
Mr. Scott A. Dubbs Lewistown Qualifications (if required): administrator/member	Governor	reappointed	7/1/2008 7/1/2013

BOARD AND COUNCIL APPOINTEES FROM JULY 2008

Appointee	Appointed by	Succeeds	Appointment/End Date
Telecommunications Advisory Council Services for Persons with Disabilities (Public Health and Human Services)			
Ms. Kristen Bruner-Kober	Governor	reappointed	7/17/2008
Billings			7/1/2011
Qualifications (if required): audiologist			
Mr. Charles Charette	Governor	reappointed	7/17/2008
Lame Deer			7/1/2011
Qualifications (if required): having a hearing disability			
Ms. Colette Custer	Governor	reappointed	7/17/2008
Plentywood			7/1/2011
Qualifications (if required): independent local exchange company representative			
Ms. Char Harasymczuk	Governor	reappointed	7/17/2008
Billings			7/1/2011
Qualifications (if required): having a hearing disability			
Ms. Julia Saylor	Governor	French	7/17/2008
Helena			7/1/2009
Qualifications (if required): having a hearing disability			

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2008 through NOVEMBER 30, 2008

Board/current position holder	Appointed by	Term end
Board of Barbers and Cosmetologists (Labor and Industry)		
Mr. Wendell Petersen, Missoula Qualifications (if required): cosmetologist	Governor	10/1/2008
Ms. Delores Lund, Plentywood Qualifications (if required): public representative	Governor	10/1/2008
Mr. Edward Dutton, Kalispell Qualifications (if required): barber	Governor	10/1/2008
Ms. Maxine Collins, Helena Qualifications (if required): manicurist	Governor	10/1/2008
Board of Medical Examiners (Labor and Industry)		
Dr. Dean Center, Bozeman Qualifications (if required): doctor of medicine	Governor	9/1/2008
Board of Outfitters (Governor)		
Rep. Carol Gibson, Billings Qualifications (if required): sportsperson	Governor	10/1/2008
Mr. John R. Redman, Sidney Qualifications (if required): public representative	Governor	10/1/2008
Mr. Thomas Sather, Bozeman Qualifications (if required): sportsperson	Governor	10/1/2008

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2008 through NOVEMBER 30, 2008

Board/current position holder	Appointed by	Term end
Board of Outfitters (Governor) cont.		
Mr. Tim Linehan, Troy	Governor	10/1/2008
Qualifications (if required): big game outfitter		
Board of Psychologists (Labor and Industry)		
Dr. Edward Trontel, Kalispell	Governor	9/1/2008
Qualifications (if required): psychologist		
Building Codes Council (Labor and Industry)		
Director Joan Miles, Helena	Governor	10/1/2008
Qualifications (if required): Director of the Department of Public Health and Human Services		
Commissioner Carol Brooker, Plains	Governor	10/1/2008
Qualifications (if required): public member		
Mr. Burl French, Kalispell	Governor	10/1/2008
Qualifications (if required): representative of the Board of Electricians		
Mr. Paul Filicetti, Missoula	Governor	10/1/2008
Qualifications (if required): licensed architect		
Mr. Michael McCourt, Missoula	Governor	10/1/2008
Qualifications (if required): public member		
Building Codes Council (Labor and Industry)		
Mr. Dave Broquist, Great Falls	Governor	10/1/2008
Qualifications (if required): professional engineer		

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2008 through NOVEMBER 30, 2008

Board/current position holder	Appointed by	Term end
Building Codes Council (Labor and Industry) cont.		
Mr. Scott Lemert, Livingston	Governor	10/1/2008
Qualifications (if required): representative of the Board of Plumbers		
Mr. Mick Wonnacott, Butte	Governor	10/1/2008
Qualifications (if required): representative of the building contractor industry		
Mr. Neil Poulsen, Bozeman	Governor	10/1/2008
Qualifications (if required): building inspector		
Mr. Mike Seaman, Kalispell	Governor	10/1/2008
Qualifications (if required): manufactured housing industry representative		
Mr. Tony Laslovich, Anaconda	Governor	10/1/2008
Qualifications (if required): home building industry representative		
Mr. Rodney N. Driver, Bigfork	Governor	10/1/2008
Qualifications (if required): elevator mechanic selected by the Department of Labor and Industry		
Mr. Allen Lorenz, Helena	Governor	10/1/2008
Qualifications (if required): state fire marshal		
Mr. Steven Meismer, Missoula	Governor	10/1/2008
Qualifications (if required): building inspector		
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs)		
Ms. Donna Dukart, Miles City	Director	10/1/2008
Qualifications (if required): American Legion Auxiliary		

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2008 through NOVEMBER 30, 2008

Board/current position holder	Appointed by	Term end
Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture)		
Mr. Don Walker, Glendive	Director	9/17/2008
Qualifications (if required): forage producer		
Ms. Sharon Scognamiglio, Anaconda	Director	9/17/2008
Qualifications (if required): representative of weed districts		
Mr. Paul Helland, Miles City	Director	9/17/2008
Qualifications (if required): representative of weed districts		
Risk Management Advisory Council (Administration)		
Mr. Jeff Shada, Bozeman	Director	11/1/2008
Qualifications (if required): public self-insured organizations		
Mr. Allen Hulse, Helena	Director	11/1/2008
Qualifications (if required): public self-insured organizations		
Mr. Greg Jackson, Helena	Director	11/1/2008
Qualifications (if required): public self-insured organizations		
Ms. Tana Wilcox, Butte	Director	11/1/2008
Qualifications (if required): private self-insured organizations		
Ms. Jacquie Duhame, Missoula	Director	11/1/2008
Qualifications (if required): private self-insured organizations		
Ms. Sheryl Olson, Helena	Director	11/1/2008
Qualifications (if required): Director of the Department of Administration designee		

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2008 through NOVEMBER 30, 2008

Board/current position holder	Appointed by	Term end
Risk Management Advisory Council (Administration) cont.		
Mr. Bill Price, Bozeman	Director	11/1/2008
Qualifications (if required): insurance agent		
Statewide Interoperability Executive Advisory Council (Administration)		
Attorney Mike McGrath, Helena	Governor	9/7/2008
Qualifications (if required): Attorney General		
General Randall Mosley, Fort Harrison	Governor	9/7/2008
Qualifications (if required): Adjutant General of the Department of Military Affairs		
Ms. Elizabeth Horsman-Witala, Helena	Governor	9/7/2008
Qualifications (if required): federal representative		
Director Mike Ferriter, Helena	Governor	9/7/2008
Qualifications (if required): Director of the Department of Corrections		
Director Janet Kelly, Helena	Governor	9/7/2008
Qualifications (if required): director of the Department of Administration		
Director Joan Miles, Helena	Governor	9/7/2008
Qualifications (if required): Director of the Department of Public Health and Human Services		
Director Jeff Hagener, Helena	Governor	9/7/2008
Qualifications (if required): Director of Fish, Wildlife and Parks		
Director Mary Sexton, Helena	Governor	9/7/2008
Qualifications (if required): Director of the Department of Natural Resources and Conservation		

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2008 through NOVEMBER 30, 2008

Board/current position holder	Appointed by	Term end
Statewide Interoperability Executive Advisory Council (Administration) cont.		
Mr. Chuck Winn, Bozeman	Governor	9/7/2008
Qualifications (if required): paid fire department representative		
Sheriff Cheryl Liedle, Helena	Governor	9/7/2008
Qualifications (if required): county law enforcement representative		
Director Jim Lynch, Helena	Governor	9/7/2008
Qualifications (if required): Director of the Department of Transportation		
Mr. William Hedstrom, Kalispell	Governor	9/7/2008
Qualifications (if required): Chair of the Board of Livestock		
Commissioner Kathy Bessette, Havre	Governor	9/7/2008
Qualifications (if required): county government representative		
Mr. Chuck Lee, Baker	Governor	9/7/2008
Qualifications (if required): 9-1-1 community representative		
Mayor Ron Tussing, Billings	Governor	9/7/2008
Qualifications (if required): municipal government representative		
Ms. Jodi O'Sullivan, Polson	Governor	9/7/2008
Qualifications (if required): volunteer fire department representative		
Ms. Mary Failing, Poplar	Governor	9/7/2008
Qualifications (if required): emergency medical community representative		

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2008 through NOVEMBER 30, 2008

Board/current position holder	Appointed by	Term end
Statewide Interoperability Executive Advisory Council (Administration) cont.		
Mr. Bruce Nelson, Helena	Governor	9/7/2008
Qualifications (if required): Governor's Chief of Staff		
Captain Dick Lewis, Missoula	Governor	9/7/2008
Qualifications (if required): municipal law enforcement representative		
Trauma Care Committee (Public Health and Human Services)		
Dr. J. Bradley Pickhardt, Missoula	Governor	11/2/2008
Qualifications (if required): Western Region Trauma Care Advisory Committee representative		
Ms. Carol Kussman, Helena	Governor	11/2/2008
Qualifications (if required): Central Region Trauma Care Advisory Committee representative		
Dr. Charles Swannack, Missoula	Governor	11/2/2008
Qualifications (if required): Montana Medical Association representative		
Mr. Jay Pottenger, Fort Benton	Governor	11/2/2008
Qualifications (if required): Montana Hospital Association representative		
Vocational Rehabilitation Council (Public Health and Human Services)		
Ms. Arlene Templer, Pablo	Governor	10/1/2008
Qualifications (if required): Section 121 representative		
Ms. Maureen Kenneally, Butte	Governor	10/1/2008
Qualifications (if required): representative of the Workforce Investment Board		

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2008 through NOVEMBER 30, 2008

Board/current position holder	Appointed by	Term end
Vocational Rehabilitation Council (Public Health and Human Services) cont.		
Ms. Jacqueline Colombe, Basin	Governor	10/1/2008
Qualifications (if required): representative of the disabilities community		
Mr. Dan Burke, Missoula	Governor	10/1/2008
Qualifications (if required): representative of the disabilities community		
Ms. Michelle Williamson, Pablo	Governor	10/1/2008
Qualifications (if required): representative of the disabilities community		
Mr. Paul Pearson, Anaconda	Governor	10/1/2008
Qualifications (if required): representative of the disabilities community		
Ms. Sharla LaFountain, Lewistown	Governor	10/1/2008
Qualifications (if required): representative of the disabilities community		
Ms. Faith Dawson, Missoula	Governor	10/1/2008
Qualifications (if required): representative of the disabilities community		
Ms. Dalayna Faught, Missoula	Governor	10/1/2008
Qualifications (if required): vocational rehabilitation counselor		
Ms. Christina Mattlin, Billings	Governor	10/1/2008
Qualifications (if required): representative of the disabilities community		
Ms. Mavis Young Bear, Harlem	Governor	10/1/2008
Qualifications (if required): Section 121 representative		

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2008 through NOVEMBER 30, 2008

Board/current position holder	Appointed by	Term end
Water and Waste Water Operators' Advisory Council (Environmental Quality)		
Mr. Grant Burroughs, Bozeman	Governor	10/16/2008
Qualifications (if required): wastewater plant operator with highest class certificate		