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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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NOTICE SECTION

SPECIAL NOTICE AND TABLE SECTION

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of rules pertaining to telemedicine	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULE I PURPOSE AND AUTHORITY, NEW RULE II DEFINITIONS, NEW RULE III LICENSE REQUIREMENT, NEW RULE IV APPLICATION FOR A TELEMEDICINE CERTIFICATE, NEW RULE V FEES, NEW RULE VI FAILURE TO SUBMIT FEES, NEW RULE VII ISSUANCE OF TELE-MEDICINE CERTIFICATE, NEW RULE VIII CERTIFICATE RENEWAL APPLICATION, NEW RULE IX EFFECT OF DENIAL OF APPLICA-TION FOR TELEMEDICINE CERTIFICATE, NEW RULE X EFFECT OF TELEMEDICINE CERTIFICATE AND NEW RULE XI SANCTIONS

TO: All Concerned Persons

1. On August 23, 2000 at 2:00 p.m., a public hearing will be held in the conference room, Fourth Floor, Federal Building, 301 South Park, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners no later than 5:00 p.m., on August 14, 2000 to advise us of the nature of the accommodation that you need. Please contact Charlene Norris, Board of Medical Examiners, 111 N. Jackson (prior to July 28, 2000) or Federal Building, 301 South Park (after August 1, 2000), P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-6435 (prior to July 28, 2000) or 841-2360 (after August 1, 2000); Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667; e-mail cnorris@state.mt.us.

3. The proposed new rules provide as follows:

<u>NEW RULE I PURPOSE AND AUTHORITY</u> (1) These rules are promulgated to promote the efficient administration of the provisions of the Medical Practice Act, 37-3-341 through 37-3-349, MCA, regulating the practice of medicine across state lines.

Auth: Sec. 37-3-203, MCA
IMP: Sec. 37-3-341, MCA

NEW RULE II DEFINITIONS The following definitions shall apply to these rules:

(1) "Practice of telemedicine" means the practice of telemedicine as defined in 37-3-342(1), MCA.

(2) Exemptions to the practice of telemedicine are defined in 37-3-342(2), MCA.

(3) "Occasional case" means the practice of medicine across state lines occurring less than five times in a calendar year or involves fewer than five patients in a calendar year.

(4) "Board" means the board of medical examiners for the state of Montana created under 2-15-1841, MCA.

(5) "Telemedicine certificate" means a certificate issued by the board to practice telemedicine which:

(a) is only issued to an applicant who meets all of the requirements of 37-3-344 and 37-3-345, MCA; and

(b) limits the licensee to the practice of telemedicine as defined in these rules and only with respect to the specialty in which the licensee is board-certified or meets the current requirements to take the examination to become board-certified and on which the licensee bases the application for a telemedicine certificate pursuant to 37-3-345(2), MCA.

(6) "Licensee" means the current holder of a telemedicine certificate.

Auth: Sec. 37-3-203, MCA
IMP: Sec. 37-3-342, MCA

NEW RULE III LICENSE REQUIREMENT (1) To engage in the practice of telemedicine in the state of Montana, a person shall hold:

(a) a current telemedicine certificate issued in accordance with the provisions of 37-3-341 through 37-3-349, MCA, or the rules of the board; or

(b) a full, unrestricted and current license issued under 37-3-301, MCA, or the rules of the board.

Auth: Sec. 37-3-203, MCA
IMP: Sec. 37-3-343, MCA

NEW RULE IV APPLICATION FOR A TELEMEDICINE CERTIFICATE

(1) An applicant for a telemedicine certificate shall:

(a) complete and return an application on a form approved by the board, together with accompanying documentation specified in 37-3-344, MCA;

(b) submit an application fee pursuant to [NEW RULE V];

(c) submit proof of current malpractice or professional negligence insurance coverage in the amount of $1,000,000; and

(d) satisfy all of the requirements set forth in 37-3-345, MCA.

Auth: Sec. 37-3-203, MCA
IMP: Sec. 37-3-344, 37-3-345, MCA

NEW RULE V FEES AND FAILURE TO SUBMIT FEES (1) The following fees will be charged:

(a) The applicant shall submit a fee of $300 in the form of a check or money order payable to the board.

(b) The licensee shall submit a renewal fee of $150 biennially (on or before the expiration of two years from the date the certificate is issued) in the form of a check or money order payable to the board, together with a completed renewal form approved by the board.

(2) All application fees and renewal application fees are nonrefundable.

Auth: Sec. 37-3-203, MCA
IMP: Sec. 37-3-344, 37-3-345, 37-3-346, 37-3-347, MCA

NEW RULE VI FAILURE TO SUBMIT FEES

(1) Failure of an applicant for a telemedicine certificate to submit the required application fee and properly completed form shall be grounds for the board to discontinue processing the application and to deny the application.

(2) Failure of a licensee to submit the required renewal fee and properly completed renewal form shall be grounds for the board to immediately cancel the telemedicine certificate. After cancellation of a telemedicine certificate for failure to submit the required renewal fee and form, the certificate may not be renewed, but another certificate may be issued on submission of a new application and compliance with 37-3-344 and 37-3-345, MCA.

Auth: Sec. 37-3-203, MCA
IMP: Sec. 37-3-347, MCA

NEW RULE VII ISSUANCE OF A TELEMEDICINE CERTIFICATE

(1) The telemedicine certificate issued by the board shall contain the name of the person to whom it is issued, the address of the person, the date and number of the certificate and such other information as the board deems necessary. The address contained on the telemedicine certificate shall be the address of the licensee where all correspondence and renewal forms from the board shall be sent during the two years for which the certificate has been issued and shall be the address deemed sufficient for purposes of service of process.

Auth: 37-3-203, MCA
IMP: 37-3-343, MCA

NEW RULE VIII CERTIFICATE RENEWAL APPLICATION

(1) Every two years the licensee shall complete and return an application for renewal on a form approved by the board, together with payment of the application renewal fee. The application for renewal and renewal fee are due on or before March 30, of the renewal year.

Auth: Sec. 37-3-203, MCA

IMP: Sec. 37-3-346, MCA

NEW RULE IX EFFECT OF DENIAL OF APPLICATION FOR TELEMEDICINE CERTIFICATE (1) An applicant who receives notice that the board has denied an application for a telemedicine certificate may apply for a physician's license to practice medicine in Montana.

Auth: Sec. 37-3-203, MCA
IMP: Sec. 37-3-347, MCA

NEW RULE X EFFECT OF TELEMEDICINE CERTIFICATE (1) The issuance by the board of a telemedicine certificate to practice medicine across state lines subjects the licensee to the jurisdiction of the board in all matters set forth in 37-3-341 through 37-3-349, MCA, and the implementing rules and regulations of the board, including all matters related to discipline.

(2) It shall be the affirmative duty of every licensee to report to the board in writing within 15 days of the denial of hospital privileges, restriction or limitation of practice, or the initiation of any disciplinary action against the certificate or license to practice medicine by any state or territory in which the licensee is licensed.

(3) The licensee agrees, by accepting the telemedicine certificate, to produce patient medical records or other materials as requested by the board and to appear before the board or any of its screening panels following receipt of a written notice issued by the board or its authorized representative.

(4) The licensee is subject to each of the grounds for disciplinary action as provided in 37-1-316 and 37-3-348, MCA, and ARM 8.28.423, in accordance with the procedures set forth in Title 37, chapters 1 and 3, MCA, and the Montana Administrative Procedure Act.

(5) The licensee shall comply with all laws, rules, and regulations governing the maintenance of patient medical records, including patient confidentiality requirements, regardless of the state where the medical records of any patient within the state of Montana are maintained.

(6) The licensee shall notify the board of any change in licensee's address as contained on the telemedicine certificate within 30 days of such change.

(7) The licensee shall cooperate in the investigation of any possible grounds for discipline, including revocation or limitation of the certificate, by timely compliance with all inquiries and subpoenas issued by the board for evidence or information. The licensee shall provide, within 21 days of receipt of a written request from the board, clear and legible copies of requested documents, including medical records, which may be related to possible grounds for discipline, including revocation or limitation of a telemedicine certificate. Failure to timely comply with a board inquiry or subpoena or to provide clear and legible copies of requested

records shall be grounds for discipline pursuant to the provisions of 37-3-348, MCA.

Auth: Sec. 37-3-203, MCA
IMP: Sec. 37-3-342, 37-3-348, 37-3-349, MCA

NEW RULE XI SANCTIONS (1) Any person who violates the provisions of these rules is subject to criminal prosecution for the unlicensed practice of medicine and/or injunctive or other action authorized in this state to prohibit or penalize continued practice without a license. Nothing in this rule shall be interpreted to limit or restrict the board's authority to discipline any physician licensed to practice in this state who violates the Medical Practice Act while engaging in the practice of medicine within this or any other state.

Auth: Sec. 37-3-203, MCA
IMP: Sec. 37-3-348, MCA

REASON: The proposed rules will affect all physicians who apply for licensure by the Board of Medical Examiners (Board) to practice medicine by any means from outside the state of Montana on Montana residents. The proposed rules are necessary to ensure that each physician meets the minimum requirements and qualifications for such practice.

During the 1999 legislative session, the legislature determined that the practice of telemedicine must be regulated, passed the legislation therefor, and authorized the Board to create rules to implement this legislation (telemedicine law).

The Board anticipates that 20-50 individuals will apply for a telemedicine certificate which will generate additional revenue of $6,000 to $15,000.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Medical Examiners, 111 North Jackson (prior to July 28, 2000) or Federal Building, 301 South Park (after August 1, 2000), P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 444-1667, or by e-mail to cnorris@state.mt.us and must be received no later than 5:00 p.m., August 24, 2000.

5. Charlene Norris, attorney, has been designated to preside over and conduct this hearing.

6. The Board of Medical Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request to the board which request shall include the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of

Medical Examiners administrative rulemaking or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 111 North Jackson (prior to July 28, 2000) or Federal Building, 301 South Park (after August 1, 2000), P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 444-1667, e-mailed to cnorris@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF MEDICAL EXAMINERS
LAWRENCE R. MCEVOY, JR., MD
PRESIDENT

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 17, 2000.

**BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 17.36.101 and 17.36.305, the repeal of ARM 17.36.304, and the adoption of NEW RULES I through IX pertaining to standards for on-site subsurface sewage systems in new subdivisions	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, REPEAL AND ADOPTION (SUBDIVISIONS)

TO: All Concerned Persons

1. On August 16, 2000, at 1:00 p.m. in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Department of Environmental Quality will hold a public hearing to consider the proposed amendment, repeal and adoption of the above-captioned rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5 p.m., August 9, 2000, to advise us of the nature of the accommodation you need. Please contact the Department at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

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

17.36.101 DEFINITIONS

(1) remains the same.

(2) "Bedrock" means material that cannot be readily excavated by hand tools, or material that does not allow water to pass through or that has insufficient quantities of fines to provide for the adequate treatment and disposal of wastewater.

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

(4) "Cesspool" means a seepage pit without a septic tank to pretreat the wastewater.

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

(7) "Connection" means a water or sewer line that connects a single building or living unit to a shared, multiple user or public water or sewage system.

~~(5) "Conventional subsurface sewage treatment system" means the process of sewage treatment in which the effluent is applied below the soil surface by distribution through horizontal open-jointed or perforated pipes in accordance with the requirements of department Circular WQB-6, 1992 edition, for individual systems and department Circular WQB-4, 1992 edition, for multiple family systems.~~

(8) "Department" means the Montana department of environmental quality.

(9) "Deviation" means a department-approved departure from a requirement contained in a department circular.

(10) "EPA facility service plan area" means those sites within the serviceable area of a public treatment system as determined in the study and planning phase.

(11) "Escarpment" means any slope greater than 50% which extends vertically 6 feet or more as measured from toe to top.

(6) remains the same but is renumbered (12).

(13) "Holding tank" means a watertight receptacle that receives wastewater for retention and does not as part of its normal operation dispose of or treat the wastewater.

(14) "Impervious layer" means any layer of material in the soil profile which has a percolation rate slower than 120 minutes per inch.

(7) and (8) remain the same but are renumbered (15) and (16).

(17) "Limiting layer" means bedrock, an impervious layer, or seasonally high groundwater.

(9) through (14) remain the same but are renumbered (18) through (23).

~~(15) "Multiple family sewage system" means a non-public sanitary sewage system which serves or is intended to serve 3 through 9 living units. The total people served may not exceed 24.~~

~~(16) "Multiple family water supply system" means a non-public water supply system designed to provide water for human consumption to serve 3 through 9 living units. The total people served may not exceed 24.~~

(24) "Multiple user sewage system" means a non-public sewage system that serves or is intended to serve 3 through 14 living units or 3 through 14 commercial facilities. The total people served may not exceed 24. In estimating the population served, the department shall multiply the number of living units times the county average of persons per living unit based on the most recent census data. Individual or shared commercial sewage systems with design flows greater than 700 gallons per day are considered as multiple-user for purposes of design requirements.

(25) "Multiple user water supply system" means a non-public water supply system designed to provide water for human consumption to serve 3 through 14 living units or 3 through 14 commercial facilities. The total people served may not exceed 24. In estimating the population served, the department shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.

(17) remains the same but is renumbered (26).

(27) "Natural soil" means soil that has developed through natural processes and to which no fill material has been added.

(18) and (19) remain the same but are renumbered (28) and (29).

~~(20)~~(30) "Public sewage system" ~~means a system for collection, transportation, treatment and disposal of sewage designed to serve either 10 or more living units for at least 60 days out of the calendar year, or 25 or more persons at least 60 days out of the calendar year.~~ is defined in 76-4-102, MCA. In estimating the population served, the department shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.

(21) and (22) remain the same but are renumbered (31) and (32).

(33) "Redoximorphic features" means soil properties associated with wetness that results from the reduction and oxidation of iron and manganese compounds in the soil after saturation and desaturation with water.

(34) "Sealed pit privy" means an enclosed receptacle designed to receive non-water-carried toilet wastes into a watertight vault.

~~(23)~~(35) "Seasonally high groundwater ~~level~~" means the ~~highest elevation to which the water rises~~ depth from the ground surface to the upper surface of the zone of saturation, as measured in an unlined hole or perforated monitoring well during the time of the year when the water table is the highest. The term includes the upper surface of a perched water table.

(36) "Seepage pit" means a covered underground receptacle which receives wastewater after primary treatment in a septic tank and allows the wastewater to seep into the surrounding soil.

(37) "Shared sewage system" means a sewage system that serves or is intended to serve two living units or commercial facilities.

(38) "Slope" means the rate that a ground surface declines in feet per 100 feet. It is expressed as percent of grade.

(39) "Soil consistence" means the attributes of soil material as expressed in degree of cohesion and adhesion or in resistance to deformation or rupture. See appendix B of department Circular DEQ-4, edition 2000.

(40) "Soil structure" means the combination or arrangement of primary soil particles into secondary units or peds. See appendix B of department Circular DEQ-4, edition 2000.

(41) "Soil texture" means the amount of sand, silt or clay measured separately in a soil mixture. See appendix B of department Circular DEQ-4, edition 2000.

~~(24)~~(42) "Spring" means ~~an~~ natural opening in the earth's surface from which water issues or seeps.

(25) remains the same but is renumbered (43).

~~(26)~~(44) "State waters" ~~means any body of water, irrigation system or drainage system, either surface or underground. "State waters" does not include irrigation waters where the waters are used up within the irrigation~~

~~system and the waters are not returned to any state waters~~ is defined in 75-5-103, MCA.

(45) "Subsurface sewage treatment system" means the process of sewage treatment in which the effluent is applied below the soil surface by distribution through horizontal open-jointed or perforated pipes.

(46) "Surface water" means any body of surface water, whether fresh or saline, including bodies such as impoundments, lakes, streams, irrigation ditches or ponds.

(47) "Unstable land forms" means areas showing evidence of mass down-slope movement such as hummock hill slopes, debris flows, landslides, and rock falls. Unstable land forms may be evidenced by slip surfaces roughly parallel to the hillside; landslide scars and carving debris ridges; fences, trees, or telephone poles which appear tilted; or tree trunks which bend uniformly as they enter the ground.

(48) "Waiver" means a department-approved departure from a requirement contained in department rules. Granting of waivers must be in accordance with ARM 17.36.601.

(49) "Wastewater" means liquid waste that is discharged from a dwelling, building, or other facility, including household, commercial, or industrial wastes; chemicals; human excreta; or animal and vegetable matter in suspension or solution.

(27) remains the same but is renumbered (50).

(51) "Zone of saturation" means the area beneath the ground in which all open spaces are filled with groundwater.

~~(28) The department hereby adopts and incorporates by reference department Circular WQB-3, 1992 edition, which sets forth minimum design requirements for small water systems; department Circular WQB-4, 1992 edition, which sets forth minimum requirements for the design, construction, and operation of sewers and septic treatment and disposal systems for multi-family and non-residential buildings; and department Circular WQB-6, 1992 edition, which sets forth minimum requirements for sewer and water systems. Copies of the circulars may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

17.36.305 MULTIPLE ~~FAMILY~~ USER WATER SUPPLY SYSTEMS

(1) Multiple ~~family~~ user water supply systems must be designed in accordance with department Circular ~~WQB-3, 1992~~ DEQ-3, 1999 edition, and with ARM Title 17, chapter 38, subchapter 2 and Title 17, chapter 30, subchapter 6.

~~(2) Multiple family sewage systems shall be designed in accordance with department Circular WQB-4, 1992 edition, and ARM 17.36.304 except sections (6) and (8).~~

~~(3) Multiple family systems must be designed in accordance with ARM Title 17, chapter 38, subchapter 2 and Title 17, chapter 30, subchapter 6.~~

~~(4)~~(2) Multiple ~~family~~ user water supply systems for six or more living units must be designed by an engineer. Smaller water supply systems which are complex (~~i.e.,~~ e.g., a water supply system with substantial pressure differences through the distribution system ~~or a sewage system requiring the pumping of sewage~~) may also be required by the department to be designed by an engineer.

~~(5)~~(3) When more than one multiple ~~family~~ user water supply system ~~or sewer system~~ is provided within a subdivision, the systems should be tied together, except that the systems must be tied together if the department deems it necessary to provide greater system reliability.

~~(6)~~(4) When a new multiple ~~family~~ user water supply ~~or sewage~~ system is created by a proposed subdivision, the means of providing adequate maintenance and operation of such system ~~shall~~ must be reported to the department. A non-profit homeowner's association or other equivalent mechanism shall be established to assure the maintenance, operation and perpetuation of the water supply ~~or sewage~~ systems~~.~~

~~(7) The department hereby adopts and incorporates by reference:~~

~~(a) ARM Title 17, chapter 38, subchapter 2 and chapter 30, subchapter 6, which set forth, respectively, maximum contaminant levels allowed in public water supply systems and water quality standards for state surface waters; and~~

~~(b) department Circular WQB-4, 1992 edition, which sets forth minimum specifications for the design, construction, and operation of sewers and septic treatment and disposal systems for multi-family and non-residential buildings;~~

~~(c) department Circular WQB-3, 1992 edition, which sets forth minimum design standards for small water systems.~~

~~(d) Copies of department Circulars WQB-3 and 4, 1992 editions, and ARM Title 17, chapter 38, subchapter 2 and chapter 30, subchapter 6, may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

4. The rule proposed for repeal is:

17.36.304 INDIVIDUAL SEWAGE TREATMENT SYSTEMS (Auth: 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA), located at page 17-3355, Administrative Rules of Montana.

5. The proposed new rules are as follows:

RULE I SEWAGE SYSTEMS: DESIGN (1) All components of subsurface sewage treatment systems must be designed and installed in accordance with department Circular DEQ-4, 2000 edition. As indicated on Table 2 of this rule, public systems and multi-user systems with design flows greater than or equal

to 2500 gallons per day must be designed by a registered professional engineer.

(2) A minimum separation of at least 4 feet of natural soil must exist between the infiltrative surface and a limiting layer, except that at least 6 feet of natural soil must exist on a steep slope (15% to 25%).

(3) The proposed subsurface sewage treatment area must include an area for 100% replacement of the system. Unless a waiver is approved by the department pursuant to ARM 17.36.601, the replacement area must meet the same requirements as the primary area. If the replacement area is not immediately adjacent to the primary area, or if the department indicates to the applicant that it has reason to believe that site conditions for the replacement area may vary from those for the primary area, the applicant shall submit adequate evidence of the suitability of the replacement area.

TABLE 2
ALLOWABLE SYSTEMS, REQUIREMENTS

	Must be Designed by a Professional Engineer			
DEQ-4 System	Public: > 5000 gpd (1)	Public or Multiple-user: ≥ 2500 gpd and ≤ 5000 gpd (2)	Public or Multiple-user: < 2500 gpd (3)	Individual /Shared: (6)
Standard Absorption Trench	NO	NO	YES	YES
At-Grade Systems	NO	NO	YES	YES
Gravelless	YES	YES	YES	YES
Deep Trench	NO	NO	NO	YES
Elevated Sand Mound	YES	YES	YES	YES
Evapotranspiration (ET) systems	NO	NO	NO	NO (5)
ET-Absorption	NO	YES	YES	YES
Intermittent Sand Filters	YES	YES	YES	YES
Recirculating Sand Filters	YES	NO (5)	NO (5)	NO
Recirculating Trickling Filters	YES	YES	YES	YES

	Must be Designed by a Professional Engineer			
DEQ-4 System	Public: > 5000 gpd (1)	Public or Multiple-user: ≥ 2500 gpd and ≤ 5000 gpd (2)	Public or Multiple-user: < 2500 gpd (3)	Individual /Shared: (6)
Chemical Nutrient Reduction; Aerobic Sewage Treatment Systems	NO (5)	NO (5)	NO (5)	NO (4)(5)
Pressure Distribution	YES	YES	YES	YES
Sand-lined Absorption Trenches	NO	YES	YES	YES
Experimental Systems	NO (5)	NO (5)	NO (5)	NO (5)

(1) Public systems with design flow greater than 5000 gallons per day (gpd).

(2) Public or multiple-user systems with design flow greater than or equal to 2500 gpd and less than or equal to 5000 gpd.

(3) Public or multiple-user systems with design flow less than 2500 gpd.

(4) Means of securing continuous operation and maintenance of these systems must be approved by county health department prior to DEQ approval.

(5) May be allowed by waiver, pursuant to ARM 17.36.601.

(6) Individual or shared commercial sewage systems that have a design flow greater than 700 gpd shall be considered multi-user.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

RULE II SEWAGE SYSTEMS: ALLOWABLE NEW AND REPLACEMENT SYSTEMS (1) The allowable new sewage treatment systems, together with certain other requirements for such systems, are indicated in Table 2 of [RULE I]. All systems must be designed and installed in accordance with department Circular DEQ-4, 2000 edition. The use of sewage systems for replacement systems shall be in accordance with department Circular DEQ-4. Requirements applicable to review of existing sewage treatment systems are set out in [RULE VIII].

(2) Systems designed in accordance with department Circular DEQ-2, 1999 edition, may not be used for individual, shared, or multi-user systems.

(3) The following sewage systems may not be used for new systems: cut systems, fill systems, artificially drained systems, cesspools, pit privies, seepage pits, and holding tanks.

(4) The following systems may be used only as replacement systems, subject to the limitations provided in department Circular DEQ-4: cut systems, fill systems, and artificially drained systems.

(5) Sealed pit privies may be used only in facilities owned and operated by a local, state, or federal unit of government, or in facilities where use of a sealed pit privy is authorized by the department of public health and human services.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

RULE III SEWAGE SYSTEMS: SITING (1) Subsurface sewage treatment systems may not be used if natural slopes are greater than 15%; however, the department may, by waiver granted pursuant to ARM 17.36.601, allow a sewage treatment system with a design flow of 5000 gallons per day or less on slopes between 15% and 25%, if a registered professional engineer or a person qualified to evaluate and identify soil in accordance with ASTM standard D5921-96el (Standard Practice for Subsurface Site Characterization of Test Pits for On-Site Septic Systems) submits adequate evidence that there will be no visible outflow of liquid downslope from the subsurface sewage treatment system.

(2) Subsurface sewage systems may not be installed on unstable landforms, as defined in [RULE I].

(3) No component of any sewage treatment system may be located under structures or driveways, parking areas or other areas subjected to vehicular traffic, except for those components of the system designed to accommodate such conditions. Drainfields must not be located in swales or depressions where runoff may flow or accumulate.

(4) For lots 1 acre in size or less, the applicant shall physically identify the drainfield location by staking or

other acceptable means of identification. For lots greater than 1 acre in size, the department may require the applicant to physically identify the drainfield location.

(5) The department may require the applicant to show detailed lot layouts on a contour map if the department determines that there is a question about suitability of the drainfield location.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

RULE IV SEWAGE SYSTEMS: HORIZONTAL SETBACKS; WAIVERS

(1) Minimum horizontal setback distances (in feet) shown in Table 3 of this rule must be maintained.

(2) A waiver of the setback distance for a cistern may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that the elevation of the cistern is higher than the elevation of the septic tank, other components, or drainfield/sand mound.

(3) A waiver of the setback distance between drainfields/sand mounds and surface waters, springs, and floodplains may be granted by the department, pursuant to ARM 17.36.601, only if:

(a) the applicant demonstrates that groundwater flow at the drainfield site can not flow into the surface water or spring; or

(b) the surface water or spring seasonally high water level is a minimum of 100 feet horizontal distance from the drainfield and the bottom of the drainfield will be at least 2 feet above floodplain elevation.

(4) The department may require more than 100 feet of separation from the floodplain or from surface water or springs if it determines that site conditions or water quality nondegradation requirements indicate a need for the greater distance.

TABLE 3
SETBACK DISTANCES

	Water Supply Wells	Sealed Components (1) and Other Components (2)	Drainfield/ Sand Mounds
Public or Multi-user Wells/Wprings	-	100	100
Other Wells	-	50	100
Suction lines	-	50	100
Cisterns	-	25	50
Roadcuts, Escarpment	-	10	25
Slopes > 25% (3)	-	10	25
Property Boundaries	10	10	10
Subsurface Drains	-	10	10
Water Lines	-	10	10
Drainfields/ Sand Mounds	100	10	-
Foundation Walls	-	10	10
Surface Water, Springs	100	50	100
Floodplains	10	(1) - (2) 100	100

(1) Sealed components include sewer lines, sewer mains, septic tanks, grease traps, dosing tanks and pumping chambers.

(2) Other components include intermittent and recirculating sand filters, package plants and evapotranspiration systems.

(3) Down-gradient of the sealed component, other component, or drainfield/sand mound.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

RULE V SEWAGE SYSTEMS: FLOODPLAINS (1) The applicant shall identify the location of any floodplain on the lot layout document. The department may require the applicant to provide additional information, such as elevations at specific locations.

(2) The applicant shall submit evidence adequate to allow the department to establish the location of the floodplain if:

(a) the federal or state government has not designated the floodplain, or if the location of the floodplain is in question with respect to a proposed subdivision; and

(b) the stream is shown as an intermittent or perennial stream on the most current USGS 7 1/2 minute (1:24,000) topographic map (unless the applicant provides adequate information that the stream is not subject to flooding).

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

RULE VI SEWAGE SYSTEMS: SITE EVALUATION (1) Percolation tests, conducted in accordance with department Circular DEQ-4, 2000 edition, must be performed within the boundary of each proposed subsurface sewage treatment system. Percolation tests must be keyed by a number on the lot layout to the results in the report form.

(2) If the applicant or the department has reason to believe that ground water will be within 7 feet of the surface at any time of the year within the boundaries of the treatment system, the applicant shall install ground water level observation pipes to a depth of at least 8 feet to determine the seasonally high groundwater level. The applicant shall monitor the observation pipes through the seasonally high ground water period.

(3) The applicant shall provide descriptions of the soils within 25 feet of the boundaries of each proposed drainfield. Soil descriptions must address the characteristics used in the US department of agriculture's National Soil Survey Handbook (USDA, NRCS, September 1999), and the Soil Survey Manual (USDA, October 1993). These characteristics include, but are not limited to, soil texture, soil structure, soil consistence and indicators of redoximorphic features. Soil descriptions must meet the following requirements:

(a) Soil descriptions for the proposed subdivision must be based on data obtained from test holes. Test holes must be at least 8 feet in depth;

(b) At least one test hole must be dug for each individual drainfield and for each shared (2-user) drainfield. At least three test holes must be dug for each multiple-user and public drainfield, unless a waiver is approved by the department pursuant to ARM 17.36.601. At least one test hole must be dug in each zone of a pressure-dosed drainfield, unless a waiver is approved by the department pursuant to ARM 17.36.601. The department shall require additional test holes

if it determines that there is significant variability of the soils in the proposed drainfield area;

(c) Test holes must be located within 25 feet of the boundaries of the proposed drainfield. The locations must be established by a person qualified to evaluate and identify soil in accordance with ASTM standard D5921-96el (Standard Practice for Subsurface Site Characterization of Test Pits for On-Site Septic Systems);

(d) If the applicant or the department has reason to believe that a limiting layer is within 7 feet of the ground surface at the site of proposed subsurface sewage treatment systems, additional test pits and soil descriptions sufficient to describe the suitability of the soil must be provided; and

(e) Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the report.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

RULE VII SEWAGE SYSTEMS: AGREEMENTS AND EASEMENTS

(1) The applicant shall demonstrate that all public, multiple-user, and shared sewage systems will be adequately operated and maintained.

(2) For public and multiple-user systems, a homeowners' association, county sewer district, or other administrative entity, with the power to charge appropriate fees, must be established as part of the operation and maintenance plan required by department Circular DEQ-4, 2000 edition.

(3) For public, multiple-user, and shared systems, easements must be obtained to allow adequate operation and maintenance of the system. Easements must be in a form acceptable to the department.

(4) Users of shared sewage systems must have an agreement that identifies the rights of each user. Shared user agreements must be in a form acceptable to the department.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

RULE VIII SEWAGE SYSTEMS: EXISTING SYSTEMS (1) If an existing sewage treatment system is present, the department shall review the adequacy of the existing system for the proposed use and the capability of the existing system to operate without risk to public health and without pollution of state waters. To assist the department in making this determination, the applicant shall submit the following information:

(a) evidence demonstrating the proper hydraulic functioning of each existing system;

(b) evidence as to whether each existing system complied with state and local laws and regulations, including permit requirements, applicable at the time of installation; and

(c) evidence that each existing septic tank was pumped within one year prior to the department's review.

(2) Unless a waiver is approved by the department pursuant to ARM 17.36.601, existing systems must be located at least 100 feet from wells.

(3) The applicant shall provide for a replacement area for each existing system. Unless a waiver is approved by the department pursuant to ARM 17.36.601, replacement areas must comply with the requirements of this subchapter.

(4) Existing cesspools, pit privies, and holding tanks must be replaced by a system approved under this subchapter. Existing sealed pit privies must also be replaced, unless they are at a facility owned and operated by a local, state, or federal unit of government, or are at a facility where use of a sealed pit privy is authorized by the department of public health and human services.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

RULE IX ADOPTION BY REFERENCE (1) For purposes of this chapter, the department hereby adopts and incorporates by reference:

(a) Department Circular DEQ-4, "Standards for On-Site Subsurface Sewage Treatment Systems", 2000 edition; and

(b) The US department of agriculture's National Soil Survey Handbook (USDA, NRCS, September 1999), and the Soil Survey Manual (USDA, October 1993), which contain a recognized set of methods for identifying the nature and characteristics of soils.

(2) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

5. The primary purpose of this proposed action is for the Department to adopt new Circular DEQ-4, which contains standards for on-site subsurface sewage treatment systems. The proposed action will allow the Department to apply Circular DEQ-4 in its review of proposed subdivisions under statutes relating to sanitation in subdivisions (Title 76, chapter 4, part 1, MCA).

In a parallel rulemaking action, Notice of Public Hearing on Proposed Amendment in 2000 MAR Issue No. 14; MAR Notice No. 17-128, the Board of Environmental Review is proposing to adopt Circular DEQ-4 for use by the Department in its review of public water supply and wastewater systems (Title 75, chapter 6, MCA; ARM Title 17, chapter 38). The Board is also proposing at MAR Notice No. 17-128 to adopt Circular DEQ-4 as a minimum design standard for use by local boards of health and local departments of health. (Title 75, chapter 5, MCA; ARM Title 17 chapter 36, subchapter 9).

To facilitate receiving public comment on the new circular under the Board and Department rulemaking actions, a single hearing and comment period will be provided. The Board and the Department will coordinate their consideration and responses to public comments submitted regarding the adoption of the new Circular DEQ-4.

The new Circular DEQ-4 replaces three prior Department Circulars: WQB-4 (Standards for Multi-Family Sewage Systems and Public Subsurface Sewage Treatment Systems), WQB-5 (Minimum Design Standards for On-Site Alternative Sewage Treatment and Disposal Systems), and WQB-6 (Standards for Individual Sewage Systems). Combining the three former circulars into one is necessary to reduce repetition, to eliminate inconsistencies, and to organize and clarify the circular requirements. Most of the revisions are organizational, but some are substantive. Substantive changes to the prior circular requirements are discussed in more detail below.

In developing the proposed Circular DEQ-4, the Department has consulted with a task force consisting of representatives from county health departments, county sanitarians, design engineers, and other interested groups. The Department has also consulted with the Board of Engineers and Land Surveyors regarding requirements for design by professional engineers.

In addition to adopting Circular DEQ-4 by reference (Rule IX), the Department is proposing to amend two rules, to repeal one rule, and to adopt eight other new rules. These rule revisions are discussed in more detail below. In general, rule revisions are needed to accompany the adoption of DEQ-4 because some requirements that were formerly contained in the WQB circulars are being transferred to rule. For example, requirements regarding depth to groundwater and steep slopes for various wastewater systems, which were formerly contained in the WQB circulars, are now set out in Rule I.

AMENDMENTS TO EXISTING RULES

ARM 17.36.101 (Definitions). The proposal adds over 20 new definitions to the rules. The new definitions are necessary to clarify the meanings of key terms used in the rules.

The proposal also modifies some existing definitions. The definition of "bedrock," which is new to the rules, is a modification of the definition in the prior circulars. The revisions to the definition of "bedrock" are discussed below as part of the circular revisions.

The term "family" has been replaced with "user" in "multiple family sewage system" and "multiple family water supply system." This change is necessary to apply the requirements for such systems to commercial as well as to residential situations.

The proposal modifies the definition of "public sewage system" to incorporate by reference the statutory definition, and to identify the Department’s method for estimating the

population served. These revisions are necessary to avoid repetition of the statute, and to provide guidance to reviewing authorities and the public about the Department's method for implementing the definition.

The proposal modifies the definition of "seasonally high groundwater" to clarify that the key indicator in a monitoring hole is the "zone of saturation" rather than simply "water," and to clarify how the saturation zone is measured. This revision is necessary to provide guidance to reviewing authorities and the public regarding measurement of seasonally high groundwater.

The proposal modifies the definition of "state waters" to incorporate the statutory definition by reference. This revision is necessary to eliminate repetition of the statutory definition.

The proposal eliminates the final paragraph of ARM 17.36.101, which incorporates the current circulars by reference. Incorporation of new Circular DEQ-4, together with other information necessary to the rules, is contained in Rule IX. The consolidation of incorporations by reference into a single rule is necessary to eliminate duplicative references and to facilitate incorporating updated documents and circulars.

ARM 17.36.305 (Multiple Family Systems). The proposed amendments delete references to multiple family sewage systems. Requirements for such systems are being moved to Rules I through VIII. The amended ARM 17.36.305 will address multiple family water supply systems, although the term "family" is being replaced by "user" in "multiple family water supply system." This change reflects a change in terminology throughout the new rules, and is necessary so that the requirements for such systems can apply to commercial as well as to residential situations.

REPEAL OF RULE

The Department's proposed action would repeal ARM 17.36.304 (Individual Sewage Treatment Systems). The provisions of this rule have been replaced by Rules I through VIII, which reorganize the sewage rules for purposes of clarity. In general, the new rules are necessary to organize and clarify the requirements for sewage systems in new installations. Substantive changes that result from the proposed new rules are discussed in more detail below.

ADOPTION OF NEW RULES

Rule I. This proposed rule sets out general design requirements for subsurface sewage systems. Except as indicated below, the requirements in the rule do not make substantive changes to the requirements in the prior rules and circulars.

In conjunction with Table 2, Rule I identifies the types and sizes of subsurface sewage system that require design by a professional engineer. Sizes of affected systems are determined by design flow. The design flow thresholds have been developed in consultation with the advisory task force and with the Montana Board of Professional Engineers and Land Surveyors.

Prior Department subdivision rules required that multiple-family systems for six or more living units, and smaller systems that are "complex," be designed by a professional engineer. ARM 17.36.305(4). For public subsurface sewage systems, the requirement for design by a professional engineer was also based on a site-specific determination of complexity. See ARM 17.38.101(4)(d). The new rule requires design by a professional engineer for public and multiple-user sewage systems with a design flow of 2500 gallons per day (gpd) or greater. This design flow approximates the six or more living unit criteria from the prior rules.

The new design-flow threshold will not significantly change the current scope of the requirement for design by a professional engineer, but it will make it easier to identify which sewage systems are subject to the requirement. Clarification of this professional engineer design requirement is necessary to provide guidance to the reviewing authorities and to the public.

The proposed rule also sets out minimum separation distances to groundwater. These provisions have not changed relative to the existing rules and circulars.

Rule II. This proposed rule, in conjunction with Table 2, identifies the types of sewage systems that are allowable in new installations. The rule codifies the Department's current practices and does not make substantive changes except that some systems formerly allowed only by waiver have become sufficiently accepted to be submitted without a waiver request. Experience has shown that such systems are functioning properly under the approved design. Consequently, the publication of the design in the new circular is necessary to provide guidance to regulating authorities and to the public.

Rule III. This proposed rule sets out general requirements for siting sewage systems. Except as indicated below, the rule recodifies existing requirements.

In a new provision, Rule III limits placement of system components under structures. This limitation, although not codified in prior rules or circulars, reflects current Department practice. Drainfields do not operate properly when isolated from the evaporation and transpiration processes that occur at ground surface. Prohibiting installation of sewage systems under structures is necessary to ensure proper operation and maintenance of the systems.

The proposed rule requires, for lots that are 1 acre or less in size, that drainfields be physically staked out for identification. In the past, the Department has required staking of smaller parcels, although no definite parcel size had been identified. See ARM 17.36.304(5). Because it becomes more difficult to fit drainfields, replacement drainfields, and homes together on smaller parcels, staking is necessary as a means to ensure that all the components will fit on the lot.

In consultation with the advisory task force, the Department has identified 1 acre or less as the parcel size at which problems begin to arise with fitting all components of the system onto the parcel. This is not a significant change from current Department practice, but use of the numeric limit will provide clear notice to the public of the scope of the requirement. This rule revision is necessary to provide guidance to reviewing authorities and to the public.

Rule IV. This proposed rule identifies horizontal setback distances that must be maintained between sewage systems and features such as surface water, floodplains, escarpments, and property boundaries. The provisions of the rule combine requirements contained in prior rules and circulars. Combining the setback requirements into a single document is necessary to ensure that reviewing authorities and the public are informed of all of the requirements.

The proposed rule includes a provision, also contained in the prior rules, that allows waivers from the setback distance between sewage treatment systems and surface water features and floodplains. See ARM 17.36.104(14)(a). One of the proposed waiver criteria is that a minimum vertical separation distance of 2 feet must be maintained. This is a reduction of the current vertical separation requirement of 4 feet. The revision will allow, pursuant to waivers, construction of sewage systems in lower elevation areas than under the current rules and circulars.

The revision to the vertical separation criterion in the vertical setback waivers will not have adverse health or environmental effects, given the other waiver criteria. The other waiver criteria require a demonstration that the groundwater flow at the drainfield site can not flow into surface water or springs, or require that a 100-foot horizontal separation distance be maintained between the drainfield and the seasonally high water level of the surface water or spring. In addition, the 4-foot separation distance to groundwater is not changing (Rule I). These limitations will provide adequate protection for public health and the environment.

Rule V. This proposed rule sets out general requirements for siting sewage systems in floodplains. In a new provision, the rule requires that floodplains be located on a lot layout document. This provision formalizes the past Department practice of requiring an applicant to document the

location of the floodplain on applications. Such documentation is necessary for the Department to complete its review. Putting the documentation requirement in a rule is necessary to inform reviewing authorities and the public of the requirement.

The rule also contains a requirement, found in the prior rules, that an applicant submit evidence to establish the floodplain location if the federal or state government has not done so, or if the location is in question. See ARM 17.36.304(14)(b). The prior rules required that the determination of the floodplain in these situations be done by the Montana Department of Natural Resources and Conservation. In practice, this has not proved workable. Consequently, the revised rule simply requires the applicant to submit evidence to the Department of Environmental Quality to establish the location of the floodplain in these situations. The Department will then make the determination of the floodplain location. This revision is necessary to streamline the process of floodplain identification.

Rule VI. This proposed rule sets out general site evaluation requirements and procedures. The new rule makes minor revisions to the provisions in prior rules and circulars to clarify and simplify the requirements. The proposed revisions do not make substantive changes to prior requirements. These revisions are necessary to clarify and simplify the requirements and procedures for site evaluations.

Rule VII. This proposed rule consolidates and reorganizes prior requirements for system user associations, agreements, and easements. See, e.g., ARM 17.36.302(5) and 17.36.305(6). In new provisions, Rule VII requires operation and maintenance easements for public and multiple-user systems and shared user agreements for shared systems (two users). These new provisions are necessary to ensure that sewage systems that serve more than a single user may be adequately operated and maintained.

Rule VIII. This proposed rule sets out the criteria that the Department will use to review existing sewage systems in proposed subdivisions. The general standard is the same as in the prior rules, which is that the existing system must be shown as capable of operating without risk to public health and without pollution to state waters. See, e.g., ARM 17.36.304(17).

The proposed rule adds a requirement that the applicant submit evidence of the proper hydraulic functioning of existing systems, evidence that the system complied with state and local laws in effect at the time the system was installed, and evidence that septic tanks have been pumped within the preceding year. These evidentiary requirements are necessary for the Department to ascertain whether the existing system can operate without risk to public health and pollution of state waters.

The proposed rule adds a requirement that existing systems be located at least 100 feet from wells. This requirement is based on the setback requirements proposed for adoption in this notice for the public water supply rules. See Rule IV, Table 3. The rule also adds a requirement that an area be provided for a replacement system. This requirement is necessary to minimize the health and environmental impacts associated with the failure of existing systems when they reach the end of their useful life.

The proposed rule contains a new prohibition on the use of existing cesspools, pit privies, and holding tanks for new installations. Sealed pit privies may be used only in facilities owned and operated by a governmental entity, or where the use is authorized by the Montana Department of Public Health and Human Services. These requirements are necessary to protect human health and the environment by restricting the use of sewage disposal methods that provide inadequate treatment and/or are subject to premature failure.

Rule IX. This proposed rule consolidates several paragraphs in the prior rules into a single new rule where all documents will be incorporated by reference. The new rule will facilitate updating incorporations by reference in the future.

ADOPTION OF CIRCULAR DEQ-4

The new Circular DEQ-4 (Standards for On-Site Subsurface Sewage Treatment Systems) replaces three previous Department Circulars: WQB-4 (Standards for Multi-Family Sewage Systems and Public Subsurface Sewage Treatment Systems), WQB-5 (Minimum Design Standards for On-Site Alternative Sewage Treatment and Disposal Systems), and WQB-6 (Standards for Individual Sewage Systems). The title of the circular is also being changed from WQB to DEQ to eliminate reference to the no-longer-existing Water Quality Bureau (WQB).

Circulars WQB-4 and WQB-6 are similar in many areas, and WQB-5 is a continuation of WQB-4. The combination of the three circulars into one is necessary to reduce repetition and to ensure that the requirements for individual systems are no more stringent than those for multi-user systems.

In drafting Circular DEQ-4, the Department and the advisory task force have extensively reorganized and rewritten the requirements of WQB-4, WQB-5, and WQB-6. However, substantive changes from the prior requirements are not extensive. This notice summarizes the major sections of Circular DEQ-4, and identifies the substantive changes from prior circulars.

Chapter 1: Applicability. The proposed applicability chapter describes typical uses for different sewage treatment and disposal systems. The system descriptions do not necessarily reflect all of the regulatory requirements applicable to the systems, and the descriptions should not be

interpreted as a general authorization to use the system described in any given situation. Limitations and other requirements on the use of the systems may exist elsewhere in the circular and rules. The discussion of typical uses is necessary to provide general information about the sewage systems. Detailed design standards for the systems are set forth in later chapters.

Chapter 1 also sets out the procedures and criteria for consideration of deviations from circular requirements. This information is necessary to guide applicants who request deviations.

Chapter 2: Definitions. Numerous new definitions have been added to clarify the meanings of key terms in the circular.

A change is proposed to the definition of "bedrock" (WQB-4, Section 40.201). The prior definition included a hardness test that was based on the capability of the material to be excavated by "power equipment." The purpose of the hardness test is to prevent siting of drainfields over material that does not allow water to pass through. The revised circular and new rules would replace "power equipment" with "hand tools." This change is necessary because, with the sophistication of current power equipment, almost any material can be excavated, so that almost no material would meet the hardness test. The Board believes that the hand tool test is better suited to fulfill the purpose of the rules. The definition has also been modified to clarify that materials other than rock can meet the definition.

The term "multi-family" has been replaced throughout the circular by "multi-user," in order to include certain commercial systems. A new definition of "multi-user sewage system" has been added. The new definition is necessary to reflect the change in circular terminology.

Chapter 3: Site Evaluation. Requirements and procedures that are contained in existing guidance documents for percolation tests, soil pits, site factors, nondegradation review, and groundwater monitoring have been clarified and transferred to the circular. These clarifications are necessary to make the requirements more accessible and to provide guidance to reviewing authorities and to the public.

Chapter 4: Site Modifications. This chapter describes the requirements and limitations on site modifications such as artificially drained sites, cut systems, and fill systems.

In a change from the existing circulars, this chapter proposes to disallow use of artificially drained sites in new subdivisions. Where drained sites have been used in the past, problems have arisen when underdrains are ineffective or not maintained. The limitation on these systems is necessary to protect public health and the environment. Artificially drained sites may still be used by counties as a replacement

technique for failing drainfields on lots that have no replacement area.

In another change from the existing circulars, this chapter proposes to disallow use of cut and fill systems for use in new subdivisions. These systems are currently allowed through a waiver. In consultation with the advisory task force, the Department has found that removal of topsoil horizons in cut systems significantly reduces the effectiveness of conventional drainfields. Fill systems are also difficult to construct properly and are subject to premature failure, with resulting threats to health and pollution of groundwater. The limitation on these systems is necessary to protect public health and the environment. These systems may still be used by counties as replacement techniques for failing drainfields on lots with no replacement area.

Chapter 5: Wastewater Flow. This chapter sets out the method for estimating wastewater flows for residential and nonresidential uses. Prior circulars identify flows only for three bedrooms and above. Circular DEQ-4 expands the table to identify flows for one bedroom and above. This is necessary to address applications involving one or two bedrooms. Based on the size of the typical family residence, single family units will be considered to have three bedrooms unless otherwise approved.

The proposed circular changes the flow rate imputed for a three bedroom dwelling from 350 to 300 gpd, and changes the flow rate per bedroom from 100 gpd to 50 gpd, for residences with more than three bedrooms. These reductions are based on current literature and on the experience of the task force members, which show that typical residences now have fewer family members with fewer persons per bedroom. The reductions are necessary to make the estimated flows more accurately reflect actual flows.

Typical daily flows for a variety of commercial, institutional, and recreational establishments are set out in the tables in this chapter. Most of the daily flows are similar to those in the previous circulars, although the numbers have been rounded to whole numbers. This revision is necessary to minimize rounding errors in calculations. Several categories have been added or clarified (e.g., churches and rest homes). The new categories are necessary to provide guidance to reviewing authorities and the public regarding typical daily flows for these situations.

The sections have been modified to clarify that gray water, including gray water that has undergone waste segregation, is subject to the same requirements. These requirements are necessary to ensure that all wastewater receives adequate treatment and to clarify the standards for these waste materials.

Chapter 6: Design of Sewers. This chapter, which sets out the design requirements for sewers, does not change the

prior circular requirements except that proposed section 6.2 sets out design standards for sewage pumping stations that are too small to be designed in accordance with Circular DEQ-2. The design standards in section 6.2 are necessary to ensure proper construction and operation of small pumping stations.

Chapter 7: Septic Tanks. This chapter sets out design and construction requirements for septic tanks and effluent filters.

In a change from the existing circulars, this chapter would allow for use of materials other than concrete for septic tanks, provided that the tanks are structurally sound and can withstand loads created by 6 feet of burial. This section is necessary to allow for flexibility in design.

Specifications for concrete tanks have also been added, to ensure that tanks are structurally sound and capable of withstanding pressures of burial. The specifications are necessary to prevent premature failure of septic tanks.

Another change from the existing circulars is a requirement for effluent filters. The Department and the task force believe that effluent filters are necessary to trap solids before they enter the drainfield. This will prevent premature failure of drainfields.

This chapter also updates the maintenance section for septic tanks, by referencing the current maintenance recommendations from the Montana State University Extension Service.

Chapter 8: Dosing System Design. This chapter sets out requirements for design, operation, and maintenance of dosing systems. Several new provisions are added to the requirements in the prior circulars. The new circular sets out different requirements for gravity dosing and pressure dosing. This distinction is necessary to make the design requirements appropriate for all situations. The new circular also revises the requirements for dosing intervals and for design and location of cleanouts. These changes are based on research showing the optimal design for maintaining proper hydraulic functioning and treatment of effluent. The revisions are necessary to ensure proper design and operation of dosing systems, and to prevent system failures.

Chapter 9: Standard Absorption Trenches. This section sets out requirements for the proper site selection, design, and construction of absorption trenches.

Several changes to the existing circulars are found in the proposed Table 9-1. The proposed effluent application rates have been changed based on recent literature and the recommendations of sanitarians and engineers on the advisory task force that show that the prior designs tended to undersize drainfields based on soils. The revised application rates would also eliminate unnecessary differences between the rates set out in WQB-4 (Standards for Multi-Family and Public Sewage Systems) and WQB-6 (Standards for Individual Sewage

Systems). The revisions are necessary to prevent system failures and to provide for consistency of design among similar systems.

New effluent application rates are proposed in Table 9-1 for soils with percolation rates less than 3 minutes per inch and rates between 61 and 120 minutes per inch. This proposal would be less stringent than the current requirements that preclude the use of drainfields in these types of soils. However, the revisions are necessary and appropriate in order to take into account new technologies. The use of pressure distribution and/or sand-lined absorption trenches is proposed for areas with fast percolation rates. Sand filter and sand mound disposal systems are proposed to overcome the slower percolation rates. Evapotranspiration systems are proposed for percolation rates greater than 121 minutes per inch. These types of systems have been used successfully in some areas of the state.

Chapters 10 through 13. The systems addressed in chapters 10 and 12 (deep absorption trenches and sand-lined absorption trenches) were described as "alternative" systems in WQB-5. The requirements for these systems have been made more specific based on literature, research, and input from advisory task force sanitarians and engineers. The revisions are necessary to update the standards for these systems.

The systems addressed in chapters 11 and 13 (at-grade absorption trenches and gravelless absorption trenches) have been approved under the prior circulars through the waiver process. Including the specifications for these systems in the revised circular is necessary in order to provide guidance to reviewing authorities and persons proposing to install such systems.

Chapters 14, 15, 16, 18, 19, 20, 21. The systems addressed in these chapters were described as "experimental" systems in WQB-5. The systems are: elevated sand mounds (Ch. 14), intermittent sand filters (Ch. 15), recirculating sand filters (Ch. 16), evapotranspiration absorption systems (Ch. 18), evapotranspiration systems (Ch. 19), aerobic sewage treatment units (Ch. 20), and chemical nutrient-reduction systems (Ch. 21). Due to the successful use and general acceptance of these systems, they are no longer classified as experimental, and standards for the systems have been proposed for inclusion in Circular DEQ-4. The standards are based on current literature and the input of the sanitarians and engineers on the advisory task force. Including the specifications for these systems in the revised circular is necessary in order to provide guidance to reviewing authorities and persons proposing to install such systems.

The loading rate for intermittent sand filter systems is proposed to be changed from 1.2 gallons per day per square foot (gpd/s.f.) to 1.0 gpd/s.f. This change is based on studies described in current literature which show that better

treatment occurs at the revised loading rates. The revision is necessary to provide for better treatment of effluent.

Changes are proposed for the dosing volume, number and spacing of orifices, and dosing frequency for intermittent and recirculating sand filter systems. The liquid capacity of the recirculation tanks would be changed from 1.5 times the average daily flow to 1.0 times the average daily flow. The effect of these changes is to move away from fixed standards to engineered dosing that is flexible, depending on the purpose of the system. These changes are based on studies described in current literature, which show that such an approach is necessary to ensure proper hydraulic functioning and treatment of effluent. The revisions are necessary to provide for better treatment of effluent.

The proposed circular would change the required thickness of PVC liners for evapotranspiration systems from 10 mils to 30 mils. This is done to be consistent with the requirement for sand filter systems. The use of the thicker liners is necessary to prevent punctures during installation and use, and will help protect public health and the environment against effluent discharges.

The proposed circular would change the term "aerobic package plant systems" to "aerobic treatment units" to more clearly describe these systems. Operation and maintenance (O&M) standards are proposed for these systems because experience shows that failures of these systems are due primarily to improper O&M. These O&M standards are more appropriate for these smaller units than the standards in the current Circular DEQ-2, which would otherwise apply. Specifying the standards for these systems is necessary to prevent system failures.

A new section is proposed to address chemical nutrient-reduction systems. Some of these systems are now generally accepted as providing Level 2 treatment. O&M standards are proposed for these systems because experience shows that failures of these systems are due primarily to improper O&M. Specifying the standards for these systems is necessary to prevent system failures.

Chapter 17: Recirculating Trickling Filters. This chapter sets out design standards for recirculating trickling filters. This type of system has been approved in the state through the waiver process. The proposed design standards simply codify the standards that the Department has used in past cases. Specifying the design for these systems is necessary to provide guidance to reviewing authorities and to the public.

Chapter 22: Experimental Systems. Treatment systems not listed in the proposed circular may be used if evaluated under this chapter and approved through the Department waiver process. The provisions of this chapter specify the criteria that the Department has used in the past to review experimental systems, to identify methods to monitor the

performance of such systems, and to identify proper levels of maintenance. The proposed chapter also allows the reviewing authority to require a redundant system to be installed in parallel with the experimental system. These requirements are necessary to ensure that experimental systems will be adequately considered and that they will be approved only where there is assurance that proper treatment will occur.

APPENDICES TO CIRCULAR

Appendix A: Percolation Test Procedure I and II. The percolation test procedures have been rewritten for clarification and to standardize the form. The revisions are necessary to make the test procedures clear and easy to follow, and to standardize the process so that there is less opportunity for error.

Appendix B: Soils and Site Characterization. This appendix clarifies and consolidates prior guidance and circular provisions regarding soil and site characterization, but does not make substantive revisions. The new Appendix is necessary in order to consolidate requirements into a single document. This will make the requirements more readily discernable, will clarify and standardize the procedures, and will facilitate consistency in the performance of soil and site characterization.

Appendix C: Groundwater Observation Well Installation and Measuring Procedures. This appendix codifies a former guidance document containing standards for design and installation for groundwater observation wells, and describes the procedures for measuring groundwater levels in the wells. Consolidating these standards into an Appendix is necessary in order to make them more readily discernable, to clarify and standardize the procedures, and to facilitate consistency in the installation and monitoring of groundwater observation wells.

6. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to Norman Mullen, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901, no later than August 31, 2000. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Norman Mullen at "nmullen@state.mt.us", no later than 5 p.m. August 31, 2000.

7. Norman Mullen, attorney for the Department, has been designated to preside over and conduct the hearing.

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

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

by: *Mark A. Simonich*
MARK A. SIMONICH, Director

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State July 17, 2000.

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 17.38.101, 17.36.902, 17.36.903 and 17.36.907 pertaining to siting criteria for public sewage systems	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (PUBLIC WATER SUPPLY) (WATER QUALITY)

TO: All Concerned Persons

1. On August 16, 2000, at 1:00 p.m. in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a hearing to consider the proposed amendment of the above-captioned rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., August 9, 2000, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

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

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM

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

(d) The board hereby adopts and incorporates by reference [NEW RULES I through VI and NEW RULES VIII and IX proposed for adoption by the Department of Environmental Quality in its Notice of Public Hearing on Proposed Amendment, Repeal and Adoption in 2000 MAR Issue No. 14; MAR Notice No. 17-127]. The design report, plans and specifications for ~~non-community sewage systems or other~~ public subsurface sewage treatment systems must be prepared in accordance with [NEW RULES I through VI and NEW RULES VIII and IX] and in accordance with the format and criteria set forth in Circular ~~WQB~~DEQ-4, "~~Montana Department of Health and Environmental Sciences Standards for Multi-Family and Public~~ Montana Standards for On-Site Subsurface Sewage Treatment Systems," ~~1992~~ 2000 edition. ~~The department or a delegated division of local government may require the plans and specifications for any of these systems to be prepared by a professional engineer when the complexity of the proposed system warrants such engineering (e.g., systems that are experimental, pressure dosed, or use more than 500 linear feet of drainfield; systems which require pumping or which use lagoons or other non-subsurface facilities).~~

~~(e) If the design report, plans, and specifications require use of an alternative on-site sewage treatment system, the submittal must meet the requirements of Circular WQB-5,~~

~~"Montana Department of Health and Environmental Sciences Standards for Alternative On-site Sewage Treatment Systems", 1992 edition.~~

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

(5) through (12) remain the same.

(13)~~(a)~~ The ~~department~~ board hereby adopts and incorporates by reference the following publications:

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

~~(iv)~~ (d) Department of ~~Health and~~ Environmental ~~Sciences'~~ Quality Circular ~~WQB~~DEQ-4, ~~1992~~ 2000 edition, which sets forth ~~minimum design standards for sewage treatment and disposal facilities serving multi-family and non-residential buildings~~ standards for on-site subsurface sewage treatment systems.

~~(v) Department of Health and Environmental Sciences Circular WQB-5, "Standards for Alternative On-site Sewage Treatment Systems", 1992 edition, which sets forth minimum design standards for alternative on-site sewage treatment systems.~~

~~(b)~~ (14) A copy of any of the documents adopted under ~~(a)~~ (13) above, may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

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

17.36.902 GENERAL REQUIREMENTS

(1) and (2) remain the same.

(3) ~~The following department circulars are~~ Department Circular DEQ-4, 2000 edition, which sets forth standards for on-site subsurface sewage treatment systems is adopted and incorporated by reference for purposes of this subchapter.~~:~~

~~(a) department Circular WQB-4 (1992 edition), which sets forth minimum requirements for site evaluation, septic tank construction, and drainfield design for multiple-family and non-residential building;~~

~~(b) department Circular WQB-5 (1992 edition), which sets forth minimum specifications for the siting, design, constructions and operation of alternative on-site wastewater treatment systems; and~~

~~(c) department Circular WQB-6 (1992 edition), which sets forth minimum requirements for site evaluation, septic tank construction, and drainfield design for individual residential buildings;~~

~~(d) c~~Copies are available from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, MCA
IMP: 75-5-305, MCA

17.36.903 DEFINITIONS

(1) remains the same.

(2) "Bedrock" means material that cannot be ~~excavated by power equipment, is so slowly permeable that it will not transmit effluent, or has open fractures or solution channels~~ readily excavated by hand tools, or material that does not allow water to pass through or that has insufficient quantities of fines to provide for the adequate treatment and disposal of wastewater.

(3) "Cesspool" means a ~~covered underground receptacle which receives untreated wastewater and permits the wastewater to seep into surrounding soil~~ seepage pit without a septic tank to pretreat the wastewater.

(4) remains the same.

~~(5) "Experimental alternative system" means a new device on which further testing is required in order to provide sufficient information regarding the ability of the system to adequately treat and dispose of wastewater. These systems are described in department Circular WQB-5 and include: elevated sand mound, evapo-transpiration, aerobic package plant, artificially drained site, subsurface sand filter, nutrient removal, and fill systems.~~

~~(6)~~(5) "Failed treatment system" means an on-site wastewater treatment system which no longer provides the treatment and/or disposal for which it was intended, or violates any of the requirements of ARM 17.36.902(1).

~~(7) "High permeability soil" means soil rate with a percolation rate faster than 3 minutes per inch.~~

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

~~(9)~~(7) "Impervious layer" means ~~a soil layer with a percolation rate slower than 60 minutes per inch~~ any layer of material in the soil profile which has a percolation rate slower than 120 minutes per inch.

~~(10) "Individual system" means an on-site wastewater treatment system serving no more than 2 single family residences.~~

~~(11) "Innovative alternative system" means a new device, not discussed in department rules or circulars, that provides primary and secondary treatment and ultimate disposal of the wastewater. Innovative alternative systems include corrugated chamber systems and gravel-less corrugated pipe systems.~~

(8) "Limiting layer" means bedrock, an impervious layer, or seasonally high groundwater.

~~(12) "Multiple family system" means an on-site wastewater treatment system serving 3 to 9 residential buildings.~~

~~(13)~~(9) "On-site wastewater treatment system" means a system for ~~sanitary~~ collection, transportation, treatment ~~and~~ or disposal of wastewater within the boundary of each lot or parcel.

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

~~(15) "Restrictive layer" means a soil layer that does not allow water entering from above to pass through as rapidly as it accumulates.~~

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

~~(17)~~(12) "Seasonally high groundwater" means ~~the closest point below the natural ground surface to which water rises at any time of the year~~ the depth from the ground surface to the upper surface of the zone of saturation, as measured in an unlined hole or perforated monitoring well during the time of the year when the water table is the highest. The term includes the upper surface of a perched water table.

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

~~(19) "Standard alternative system" means an on-site wastewater treatment system that is not considered standard, but available information indicates that adequate treatment and disposal are achieved when designed and constructed properly. Standard alternative systems are described in department Circular WQB-5 and include alternating drainfields, shallow capped drainfields, waste segregation, deep absorption trenches, and sand-lined drainfields.~~

~~(20)~~(14) "Wastewater" means ~~a combination of liquid wastes that may include chemicals, house wastes, wash water, human excreta and animal or vegetable matter in suspension or solution; and solids in suspension or solution~~ liquid waste that is discharged from a dwelling, building, or other facility, including household, commercial or industrial wastes; chemicals; human excreta; or animal and vegetable matter in suspension or solution.

AUTH: 75-5-201, MCA
IMP: 75-5-305, MCA

17.36.907 TECHNICAL REQUIREMENTS (1) On-site wastewater treatment systems must be designed and constructed in accordance with the applicable requirements~~, as described~~ in ARM 17.36.902 ~~below:~~ and in department Circular DEQ-4, 2000 edition.

~~(a) Individual systems must be designed and installed in accordance with the requirements of department Circular WQB-6.~~

~~(b) Multiple family systems must be designed and installed in accordance with the requirements of department Circular WQB-4.~~

~~(c) Standard alternative systems must be designed and installed in accordance with the requirements of department Circular WQB-5.~~

~~(d) Experimental alternative systems must be designed and installed in accordance with the requirements of department Circular WQB-5.~~

(2) ~~Other on-site wastewater treatment systems~~ An on-site wastewater treatment system other than those described in department Circular DEQ-4, 2000 edition may be allowed only if site constraints prevent the applicant from constructing a system that meets the requirements of (1) of this rule, and all off-site treatment alternatives have been considered and determined to be infeasible. The following on-site wastewater treatment systems must be designed so that the requirements of (3) of this rule are met, and that the following specific requirements, as applicable, are fulfilled:

~~(a) Innovative alternative systems may be used for replacement systems only and must provide primary treatment (removal of settleable solids) and secondary treatment (stabilization of effluent from primary treatment).~~

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

(3) and (4) remain the same.

(5) The following minimum horizontal separation distances must be provided between a septic tank and the features indicated:

Buildings	10 feet
Water wells and suction lines	50 feet
Property lines	10 feet
Water supply lines under pressure	10 feet
Lakes and streams and ponds	50 feet
Cisterns	25 feet
Roadcuts, cliffs, or banks	10 feet

(6) Absorption trenches must be located at least 100 feet from a potable water supply or pump suction line. Greater horizontal separation distances may be needed depending on engineering and hydrogeological data and type of water supply.

(7) Absorption trenches must be located at least 100 feet from the 100 year flood level of any river, stream, water course, lake or impoundment unless a waiver has been provided by the reviewing authority. A waiver may be provided only if:

(a) the water course is an irrigation ditch and the groundwater flow at the drainfield site will not enter the irrigation ditch; or

(b) the river or stream average yearly high water mark is a minimum of 100 feet from the drainfield and the bottom of the drainfield will be at least four feet above the 100-year flood elevation.

(8) Where the floodplain has not been designated and its level relative to a treatment system is in question, delineation of the floodplain must be referred to the department of natural resources and conservation.

(9) Absorption trenches must be at least 10 feet from water lines, property lines and buildings, and must be at least 25 feet from roadcuts, cliffs, and banks.

(10) Absorption trenches must be located to maximize the vertical separation distance from the bottom of the absorption trench to the seasonally high groundwater level, bedrock, or other limiting layer, but under no circumstances may this vertical separation be less than four feet.

AUTH: 75-5-201, MCA
IMP: 75-5-305, MCA

4. In the proposed amendments, the Board is incorporating by reference new Department Circular DEQ-4. The incorporation of Circular DEQ-4 is being done under two

separate statutory authorities. First, the Board is acting pursuant to Section 75-6-103, MCA, of the public water supply law to amend its rules to adopt Circular DEQ-4 and new rules that the Department is proposing simultaneously in a parallel rulemaking proceeding. Under these amendments, Circular DEQ-4 would be used by the Department in reviewing plans and specifications for public subsurface sewage systems. Second, the Board proposes to adopt Circular DEQ-4, together with Board rule changes implementing the circular, under water quality statutes. (Section 75-5-305(2), MCA). Under these amendments, Circular DEQ-4 would be used by local boards of health as minimum standards for the control and disposal of sewage under Section 50-2-116(1)(i), MCA.

In a related rulemaking action proposed for adoption by the Department of Environmental Quality in its Notice of Public Hearing on Proposed Amendment, Repeal and Adoption in 2000 MAR Issue No. 14; MAR Notice No. 17-127, the Department is proposing to adopt Circular DEQ-4 for use in its review of subdivisions. (Title 76, chapter 4, MCA; ARM Title 17, chapter 36). To facilitate receiving public comment on the new circular under the two rulemaking actions, a single hearing and comment period will be provided. The Board and the Department will coordinate their consideration and responses to public comments submitted regarding the adoption of the new Circular DEQ-4.

Following is a more detailed discussion of the proposed amendments. The discussion addresses the amendments to the public water supply rules, the provisions of the new Circular DEQ-4, the provisions of the new rules implementing Circular DEQ-4 for purposes of the public water supply rules, and the amendments to the Board rules containing minimum standards for local boards of health.

Amendments to Public Water Supply Rules. The Board is proposing to amend the public water supply rules to adopt by reference new Department Circular DEQ-4, and to adopt by reference new Department rules implementing Circular DEQ-4.

The new Department Circular DEQ-4, which contains standards for on-site subsurface sewage treatment systems, replaces prior Department Circulars WQB-4, WQB-5, and WQB-6. The existing public water supply rules incorporate by reference Circulars WQB-4 and WQB-5 for use by the Department in reviewing plans and specifications for public sewage systems under Title 75, chapter 6, MCA, and ARM Title 17, chapter 38. This rulemaking is necessary to replace the former Circulars WQB-4 and WQB-5 with the new Circular DEQ-4. WQB-6 dealt with individual sewage systems only, and is therefore not relevant to public systems.

ARM 17.38.101(4)(d) and (e). The proposed amendments adopt new Circular DEQ-4 together with new rules that the Department is simultaneously proposing to implement Circular DEQ-4. The proposed amendments require that plans and specifications for public subsurface sewage treatment systems

be prepared in accordance with Circular DEQ-4 and the implementing rules. The amendments also delete references to the former Circulars WQB-4 and WQB-5.

These amendments are necessary to implement the new circular for use by the Department in reviewing plans and specifications for public subsurface sewage systems. The amendments are also necessary to provide consistency between the Board's public water supply rules and the Department's subdivision rules.

The proposed amendments also delete the requirement in ARM 17.38.101(4)(d) that a professional engineer prepare plans and specifications for complex systems. This requirement is being replaced by provisions in the new Department rules adopted by reference in this rulemaking. The requirements for engineering design are addressed below under the discussion of the Department's new rules implementing Circular DEQ-4. This revision is necessary to provide consistency between the Board's public water supply rules and the Department's subdivision rules.

ARM 17.38.101(13)(a). The proposed amendments adopt the new Circular DEQ-4 and delete references to Circulars WQB-4 and WQB-5. The proposed amendments also correct a reference that currently refers to the Department's adopting circulars by reference. In the public water supply rules, the circulars must be adopted by the Board, not the Department. The amendment is necessary to correctly identify the adopting authority.

ADOPTION OF CIRCULAR DEQ-4

The new Circular DEQ-4 (Standards for On-Site Subsurface Sewage Treatment Systems) would replace three previous Department circulars: WQB-4 (Standards for Multi-Family Sewage Systems and Public Subsurface Sewage Treatment Systems), WQB-5 (Minimum Design Standards for On-Site Alternative Sewage Treatment and Disposal Systems), and WQB-6 (Standards for Individual Sewage Systems). The title of the circular is also being changed from WQB to DEQ to eliminate reference to the no-longer-existing Water Quality Bureau (WQB).

Circulars WQB-4 and WQB-6 are similar in many areas, and WQB-5 is a continuation of WQB-4. The combination of the three circulars into one is necessary to reduce repetition and to ensure that the requirements for individual systems are no more stringent than those for multi-user systems.

In developing the proposed Circular DEQ-4, the Department has consulted with a task force consisting of representatives from county health departments, county sanitarians, design engineers, and other interested groups. The Department has also consulted with the Board of Engineers and Land Surveyors regarding requirements for design by professional engineers.

In preparing the new Circular DEQ-4, the Department and the advisory task force have extensively reorganized and rewritten the requirements of WQB-4, WQB-5, and WQB-6.

However, substantive changes from the prior requirements are not extensive. This notice summarizes the major sections of Circular DEQ-4, and identifies the substantive changes from prior circulars.

Chapter 1: Applicability. The proposed applicability chapter describes typical uses for different sewage treatment and disposal systems. The system descriptions do not necessarily reflect all of the regulatory requirements applicable to the systems, and the descriptions should not be interpreted as a general authorization to use the system described in any given situation. Limitations and other requirements on the use of the systems may exist elsewhere in the circular and rules. The discussion of typical uses is necessary to provide general information about the sewage systems. Detailed design standards for the systems are set forth in later chapters.

Chapter 1 also sets out procedures and criteria for consideration of deviations from circular requirements. This information reflects prior requirements, and is necessary to guide applicants who request deviations.

Chapter 2: Definitions. Numerous new definitions have been added to clarify the meanings of key terms in the circular.

A change is proposed to the definition of "bedrock" (WQB-4, Section 40.201). The prior definition included a hardness test that was based on the capability of the material to be excavated by "power equipment." The purpose of the hardness test is to prevent siting of drainfields over material that does not allow water to pass through. The revised circular and new rules would replace "power equipment" with "hand tools." This change is necessary because, with the sophistication of current power equipment, almost any material can be excavated, so that almost no material would meet the hardness test. The Board believes that the hand tool test is better suited to fulfill the purpose of the rules. The definition has also been modified to clarify that materials other than rock can meet the definition.

The term "multi-family" has been replaced throughout the circular by "multi-user," in order to include certain commercial systems. A new definition of "multi-user sewage system" has been added. The new definition is necessary to reflect the change in circular terminology.

Chapter 3: Site Evaluation. Requirements and procedures that are contained in existing guidance documents for percolation tests, soil pits, site factors, nondegradation review, and groundwater monitoring have been clarified and transferred to the circular. These clarifications are necessary to make the requirements more accessible and to provide guidance to reviewing authorities and to the public.

Chapter 4: Site Modifications. This chapter describes the requirements and limitations on site modifications such as artificially drained sites, cut systems, and fill systems.

In a change from the existing circulars, this chapter proposes to disallow use of artificially drained sites in new subdivisions. Where drained sites have been used in the past, problems have arisen when underdrains are ineffective or not maintained. The limitation on these systems is necessary to protect public health and the environment. Artificially drained sites may still be used by counties as a replacement technique for failing drainfields on lots that have no replacement area.

In another change from the existing circulars, this chapter proposes to disallow use of cut and fill systems for use in new subdivisions. These systems are currently allowed through a waiver. In consultation with the advisory task force, the Department has found that removal of topsoil horizons in cut systems significantly reduces the effectiveness of conventional drainfields. Fill systems are also difficult to construct properly and are subject to premature failure, with resulting threats to health and pollution of groundwater. The limitation on these systems is necessary to protect public health and the environment. These systems may still be used by counties as replacement techniques for failing drainfields on lots with no replacement area.

Chapter 5: Wastewater Flow. This chapter sets out the method for estimating wastewater flows for residential and nonresidential uses. Prior circulars identify flows only for three bedrooms and above. Circular DEQ-4 expands the table to identify flows for one bedroom and above. This is necessary to address applications involving one or two bedrooms. Based on the size of the typical family residence, single family units will be considered to have three bedrooms unless otherwise approved.

The proposed circular changes the flow rate imputed for a three bedroom dwelling from 350 to 300 gallons per day (gpd), and changes the flow rate per bedroom from 100 gpd to 50 gpd for residences with more than three bedrooms. These reductions are based on current literature and on the experience of the task force members, which show that typical residences now have fewer family members with fewer persons per bedroom. The reductions are necessary to make the estimated flows more accurately reflect actual flows.

Typical daily flows for a variety of commercial, institutional, and recreational establishments are set out in the tables in this chapter. Most of the daily flows are similar to those in the previous circulars, although the numbers have been rounded to whole numbers. This revision is necessary to minimize rounding errors in calculations. Several categories have been added or clarified (e.g., churches and rest homes). The new categories are necessary to

provide guidance to reviewing authorities and the public regarding typical daily flows for these situations.

The sections have been modified to clarify that gray water, including gray water that has undergone waste segregation, is subject to the same requirements. These requirements are necessary to ensure that all wastewater receives adequate treatment, and to clarify the standards for these waste materials.

Chapter 6: Design of Sewers. This chapter, which sets out the design requirements for sewers, does not change the prior circular requirements except that proposed section 6.2 sets out design standards for sewage pumping stations that are too small to be designed in accordance with Circular DEQ-2. The design standards in section 6.2 are necessary to ensure proper construction and operation of small pumping stations.

Chapter 7: Septic Tanks. This chapter sets out design and construction requirements for septic tanks and effluent filters.

In a change from the existing circulars, this chapter would allow for use of materials other than concrete for septic tanks, provided that the tanks are structurally sound and can withstand loads created by 6 feet of burial. This section is necessary to allow for flexibility in design.

Specifications for concrete tanks have also been added, to ensure that tanks are structurally sound and capable of withstanding pressures of burial. The specifications are necessary to prevent premature failure of septic tanks.

Another change from the existing circulars is a requirement for effluent filters. The Board believes that effluent filters are necessary to trap solids before they enter the drainfield. The filter requirement will result in little or no added expense, and will prevent premature failure of drainfields.

This chapter also updates the maintenance section for septic tanks by referencing the current maintenance recommendations from the Montana State University Extension Service.

Chapter 8: Dosing System Design. This chapter sets out requirements for design, operation, and maintenance of dosing systems. Several new provisions are added to the requirements in the prior circulars. The new circular sets out different requirements for gravity dosing and pressure dosing. This distinction is necessary to make the design requirements appropriate for all situations. The new circular also revises the requirements for dosing intervals and for design and location of cleanouts. These changes are based on research showing the optimal design for maintaining proper hydraulic functioning and treatment of effluent. The revisions are necessary to ensure proper design and operation of dosing systems, and to prevent system failures.

Chapter 9: Standard Absorption Trenches. This section sets out requirements for the proper site selection, design, and construction of absorption trenches.

Several changes to the existing circulars are found in the proposed Table 9-1. The proposed effluent application rates have been changed based on recent literature and the recommendations of sanitarians and engineers on the advisory task force that show that the prior designs tended to undersize drainfields based on soils. The revised application rates would also eliminate unnecessary differences between the rates set out in WQB-4 (Standards for Multi-Family and Public Sewage Systems) and WQB-6 (Standards for Individual Sewage Systems). The revisions are necessary to prevent system failures and to provide for consistency of design among similar systems.

New effluent application rates are proposed in Table 9-1 for soils with percolation rates less than 3 minutes per inch and rates between 61 and 120 minutes per inch. This proposal would be less stringent than the current requirements that preclude the use of drainfields in these types of soils. However, the revisions are necessary and appropriate in order to take into account new technologies. The use of pressure distribution and/or sand-lined absorption trenches is proposed for areas with fast percolation rates. Sand filter and sand mound disposal systems are proposed to overcome the slower percolation rates. Evapotranspiration systems are proposed for percolation rates greater than 121 minutes per inch. These types of systems have been used successfully in some areas of the state.

Chapters 10 through 13. The systems addressed in chapters 10 and 12 (deep absorption trenches and sand-lined absorption trenches) were described as "alternative" systems in WQB-5. The requirements for these systems have been made more specific based on literature, research, and input from advisory task force sanitarians and engineers. The revisions are necessary to update the standards for these systems.

The systems addressed in chapters 11 and 13 (at-grade absorption trenches and gravelless absorption trenches) have been approved under the prior circulars through the waiver process. Including the specifications for these systems in the revised circular is necessary in order to provide guidance to reviewing authorities and persons proposing to install such systems.

Chapters 14, 15, 16, 18, 19, 20, 21. The systems addressed in these chapters were described as "experimental" systems in WQB-5. The systems are: elevated sand mounds (Ch. 14), intermittent sand filters (Ch. 15), recirculating sand filters (Ch. 16), evapotranspiration absorption systems (Ch. 18), evapotranspiration systems (Ch. 19), aerobic sewage treatment units (Ch. 20), and chemical nutrient-reduction systems (Ch. 21).

Due to the successful use and general acceptance of these systems, they are no longer classified as experimental, and standards for the systems have been proposed for inclusion in Circular DEQ-4. The standards are based on current literature and the input of the sanitarians and engineers on the advisory task force. Including the specifications for these systems in the revised circular is necessary in order to provide guidance to reviewing authorities and persons proposing to install such systems.

The loading rate for intermittent sand filter systems is proposed to be changed from 1.2 gallons per day per square foot (gpd/s.f.) to 1.0 gpd/s.f. This change is based on studies described in current literature which show that better treatment occurs at the revised loading rates. The revision is necessary to provide for better treatment of effluent.

Changes are proposed for the dosing volume, number and spacing of orifices, and dosing frequency for intermittent and recirculating sand filter systems. The liquid capacity of the recirculation tanks would be changed from 1.5 times the average daily flow to 1.0 times the average daily flow. The effect of these changes is to move away from fixed standards to engineered dosing that is flexible, depending on the purpose of the system. These changes are based on studies described in current literature which show that such an approach is necessary to ensure proper hydraulic functioning and treatment of effluent. The revisions are necessary to provide for better treatment of effluent.

The proposed circular would change the required thickness of PVC liners for evapotranspiration systems from 10 mils to 30 mils. This is done to be consistent with the requirement for sand filter systems. The use of the thicker liners is necessary to prevent punctures during installation and use, and will help protect public health and the environment against effluent discharges.

The proposed circular would change the term "aerobic package plant systems" to "aerobic treatment units" to more clearly describe these systems. Operation and maintenance (O&M) standards are proposed for these systems because experience shows that failures of these systems are due primarily to improper O&M. These O&M standards are more appropriate for these smaller units than the standards in the current Circular DEQ-2, which would otherwise apply. Specifying the standards for these systems is necessary to prevent system failures.

A new section is proposed to address chemical nutrient-reduction systems. Some of these systems are now generally accepted as providing Level 2 treatment. O&M standards are proposed for these systems because experience shows that failures of these systems are due primarily to improper O&M. Specifying the standards for these systems is necessary to prevent system failures.

Chapter 17: Recirculating Trickling Filters. This chapter sets out design standards for recirculating trickling

filters. This type of system has been approved in the state through the waiver process. The proposed design standards simply codify the standards that the Department has used in past cases. Specifying the design for these systems is necessary to provide guidance to reviewing authorities and to the public.

Chapter 22: Experimental Systems. Treatment systems not listed in the proposed circular may be used if evaluated under this chapter and approved through the Department waiver process. The provisions of this chapter specify the criteria that the Department has used in the past to review experimental systems, to identify methods to monitor the performance of such systems, and to identify proper levels of maintenance. The proposed chapter also allows the reviewing authority to require a redundant system to be installed in parallel with the experimental system. These requirements are necessary to ensure that experimental systems will be adequately considered, and that they will be approved only where there is assurance that proper treatment will occur.

APPENDICES TO CIRCULAR

Appendix A: Percolation Test Procedure I and II. The percolation test procedures have been rewritten for clarification and to standardize the form. The revisions are necessary to make the test procedures clear and easy to follow, and to standardize the process so that there is less opportunity for error.

Appendix B: Soils and Site Characterization. This appendix clarifies and consolidates prior guidance and circular provisions regarding soil and site characterization, but does not make substantive revisions. The new Appendix is necessary in order to consolidate requirements into a single document. This will make the requirements more readily discernable, will clarify and standardize the procedures, and will facilitate consistency in the performance of soil and site characterization.

Appendix C: Groundwater Observation Well Installation and Measuring Procedures. This appendix codifies a former guidance document containing standards for design and installation for groundwater observation wells, and describes the procedures for measuring groundwater levels in the wells. Consolidating these standards into an Appendix is necessary in order to make them more readily discernable, to clarify and standardize the procedures, and to facilitate consistency in the installation and monitoring of groundwater observation wells.

ADOPTION OF NEW RULES IMPLEMENTING CIRCULAR DEQ-4

In its amendments to the public water supply rules, the Board is proposing to adopt both the new Circular DEQ-4 and eight new rules to implement the new circular. The implementing rules, which have been drafted by the Department in consultation with an advisory task force, transfer provisions from the former circulars to rules, with revisions as discussed below.

Rule I. This proposed rule sets out general design requirements for subsurface sewage systems. Except as indicated below, the requirements in the rule do not make substantive changes to the requirements in the prior rules and circulars.

In conjunction with Table 2, Rule I identifies the types and sizes of subsurface sewage system that require design by a professional engineer. Sizes of affected systems are determined by design flow. The design flow thresholds have been developed in consultation with the advisory task force and with the Montana Board of Professional Engineers and Land Surveyors.

Prior Department subdivision rules required that multiple-family systems for six or more living units, and smaller systems that are "complex," be designed by a professional engineer. ARM 17.36.305(4). For public subsurface sewage systems, the requirement for design by a professional engineer was also based on a site-specific determination of complexity. See ARM 17.38.101(4)(d). The new rule requires design by a professional engineer for public and multiple-user sewage systems with a design flow of 2500 gpd or greater. This design flow approximates the six or more living unit criteria from the prior rules.

The new design-flow threshold will not significantly change the current scope of the requirement for design by a professional engineer, but it will make it easier to identify which sewage systems are subject to the requirement. Clarification of this professional engineer design requirement is necessary to provide guidance to the reviewing authorities and to the public.

The proposed rule also sets out minimum separation distances to groundwater. These provisions have not been changed relative to the existing rules and circulars.

Rule II. This proposed rule, in conjunction with Table 2, identifies the types of sewage systems that are allowable in new installations. The rule codifies the Department's current practices and does not make substantive changes except that some systems formerly allowed only by waiver have become sufficiently accepted to be submitted without a waiver request. Experience has shown that such systems are functioning properly under the approved design. Consequently, the publication of the design in the new circular is necessary to provide guidance to regulating authorities and to the public.

Rule III. This proposed rule sets out general requirements for siting sewage systems. Except as indicated below, the rule simply recodifies existing requirements.

In a new provision, Rule III limits placement of system components under structures. This limitation, although not codified in prior rules or circulars, reflects current Department practice. Drainfields do not operate properly when isolated from the evaporation and transpiration processes that occur at ground surface. Prohibiting installation of sewage systems under structures is necessary to ensure proper O&M of the systems.

The proposed rule requires, for lots that are 1 acre or less in size, that drainfields be physically staked out for identification. In the past, the Department has required staking of smaller parcels, although no definite parcel size had been identified. See ARM 17.36.304(5). Because it becomes more difficult to fit drainfields, replacement drainfields, and homes together on smaller parcels, staking is necessary as a means to ensure that all the components will fit on the lot.

In consultation with the advisory task force, the Department has identified 1 acre or less as the parcel size at which problems begin to arise with fitting all components of the system onto the parcel. This is not a significant change from current Department practice, but use of the numeric limit will provide clear notice to the public of the scope of the requirement. This rule revision is necessary to provide guidance to reviewing authorities and to the public.

Rule IV. This proposed rule identifies horizontal setback distances that must be maintained between sewage systems and features such as surface water, floodplains, escarpments, and property lines. The provisions of the rule combine requirements contained in prior rules and circulars. Combining the setback requirements into a single document is necessary to ensure that reviewing authorities and the public are informed of all of the requirements.

The proposed rule includes a provision, also contained in the prior rules, that allows waivers from the setback distance between sewage treatment systems and surface water features and floodplains. See ARM 17.36.104(14)(a). One of the proposed waiver criteria is that a minimum vertical separation distance of 2 feet must be maintained. This is a reduction of the current vertical separation requirement of 4 feet. The revision is necessary to allow, pursuant to waivers, construction of sewage systems in lower elevation areas than under the current rules and circulars.

The revision to the vertical separation criterion in the vertical setback waivers will not have adverse health or environmental effects, given the other waiver criteria. The other waiver criteria require a demonstration that the groundwater flow at the drainfield site can not flow into surface water or springs, or that a 100-foot horizontal

separation distance be maintained between the drainfield and the seasonally high water level of the surface water or spring. In addition, the 4-foot separation distance to groundwater is not changing (Rule I). These limitations will provide adequate protection for public health and the environment.

Rule V. This proposed rule sets out general prohibitions against siting sewage systems in floodplains. In a new provision, the rule requires that floodplains be located on a lot layout document. This provision formalizes the past Department practice of requiring an applicant to document the location of the floodplain on applications. Such documentation is necessary for the Department to complete its review. Putting the documentation requirement in a rule is necessary to inform reviewing authorities and the public of the requirement.

The rule also contains a requirement, found in the prior rules, that an applicant submit evidence to establish the floodplain location if the federal or state government has not done so, or if the location is in question. See ARM 17.36.304(14)(b). The prior rules required that the determination of the floodplain in these situations be done by the Montana Department of Natural Resources and Conservation. In practice, this has not proved workable. Consequently, the revised rule simply requires the applicant to submit evidence to the Department of Environmental Quality to establish the location of the floodplain in these situations. The Department will then make the determination of the floodplain location. This revision is necessary to streamline the process of floodplain identification.

Rule VI. This proposed rule sets out general site evaluation requirements and procedures. The new rule makes minor revisions to the provisions in prior rules and circulars to clarify and simplify the requirements. The proposed revisions do not make substantive changes to prior requirements. These revisions are necessary to clarify and simplify the requirements and procedures for site evaluations.

Rule VIII. This proposed rule sets out the criteria that the Department will use to review existing sewage systems in proposed subdivisions. The general standard is the same as in the prior rules, which is that the existing system must be shown as capable of operating without risk to public health and without pollution to state waters. See, e.g., ARM 17.36.304(17).

The proposed rule adds a requirement that the applicant submit evidence of the proper hydraulic functioning of existing systems, evidence that the system complied with state and local laws in effect at the time the system was installed, and evidence that septic tanks have been pumped within the preceding year. These evidentiary requirements are necessary for the Department to ascertain whether the existing system

can operate without risk to public health and pollution of state waters.

The proposed rule adds a requirement that existing systems be located at least 100 feet from wells. This requirement is based on the setback requirements proposed for adoption in this notice for the public water supply rules. The rule also adds a requirement that area be provided for a replacement system. This requirement is necessary to minimize the health and environmental impacts associated with the failure of existing systems when they reach the end of their useful life.

The proposed rule contains a new prohibition on the use of existing cesspools, pit privies, and holding tanks for new installations. Sealed pit privies may be used only in facilities owned and operated by a governmental entity, or where the use is authorized by the Montana Department of Public Health and Human Services. These requirements are necessary to protect human health and the environment by restricting the use of sewage disposal methods that provide inadequate treatment and/or are subject to premature failure.

Rule IX. This proposed rule consolidates several paragraphs in the prior rules into a single new rule where all documents will be incorporated by reference. The new rule will facilitate updating incorporations by reference in the future.

AMENDMENTS TO BOARD MINIMUM STANDARDS FOR LOCAL BOARDS OF HEALTH

The Board is required to adopt minimum standards for use by local boards of health for the control and disposal of sewage. Section 75-5-305(2), MCA. The Board's minimum standards are codified in ARM Title 17, chapter 36, subchapter 9 (hereinafter "Subchapter 9"). The existing Subchapter 9 rules incorporate by reference the design standards in Department Circulars WQB-4, WQB-5, and WQB-6. As discussed elsewhere in this notice, the Department and Board are proposing to replace these circulars with Circular DEQ-4. The proposed amendments to Subchapter 9 incorporate by reference Circular DEQ-4 and delete references to Circulars WQB-4, WQB-5, and WQB-6.

In addition to incorporating Circular DEQ-4, the proposed amendments to Subchapter 9 adopt provisions necessary to implement the circular. This is necessary because the new Circular DEQ-4 would delete some requirements of former Circulars WQB-4, WQB-5, and WQB-6, with the intention that the requirements would be transferred into rules. The proposed revisions to Subchapter 9 amend the rules to adopt the transferred provisions from the former circulars. These revisions are discussed in more detail below.

ARM 17.36.902. The proposed amendments adopt and incorporate by reference Circular DEQ-4, and delete references

to Circulars WQB-4, WQB-5, and WQB-6. These amendments are necessary to implement the new circular for use as a minimum standard by local boards of health. The provisions of the new circular are discussed above.

ARM 17.36.903. The proposed amendments revise the definitions of Subchapter 9 to implement Circular DEQ-4, and make other minor changes for clarity and consistency.

The definition of "bedrock" is modified to be consistent with the definition in the new circular and in the Department's subdivision rules at ARM 17.36.101. The revisions to the definition are discussed above as part of the circular revisions. This amendment is necessary to help provide consistency between the Department's and the local health boards' reviews of sewage systems.

The definition of "cesspool" is modified to be consistent with the definition in the Department's subdivision rules at ARM 17.36.101. No substantive changes are intended by this revision. This amendment is necessary to help provide consistency between the Department's and the local health boards' reviews of sewage systems.

The definitions of "high permeability soil," "individual system," "innovative alternative system," "multiple family system," "restrictive layer," and "standard alternative system" are deleted because the terms either are not used or will no longer be used in Subchapter 9. This amendment is necessary to eliminate unnecessary definitions from the rules.

A change is proposed to the definition of "impervious layer." The permeability rate defining an impervious layer is changed from less than 60 minutes per inch to less than 120 minutes per inch. This change parallels a change in the Department's proposed subdivision rules. The effect of the change would be to allow drainfields on slower permeability soils. This change is necessary to accommodate the longer drainfield lengths and revised application rates set out in Table 9-1 of the revised circular. The latter revisions, which incorporate current design standards for drainfields, will allow the siting of properly engineered drainfields in the slower permeability soils.

A new definition is proposed for the term "limiting layer." The new definition simply restates the elements previously set out in the rules or circulars each time the term occurred. The new definition is necessary to avoid repetition in the text of the rule of the elements of a limiting layer.

The definition of "on-site wastewater treatment system" is revised to clarify that "on-site" means within the boundary of each lot or parcel. The revision makes the definition consistent with the definition of the term in Circular DEQ-4. The amendment is necessary to clarify the meaning of the term and to ensure that the term means the same in both the rules and the circular.

The proposal modifies the definition of "seasonally high groundwater" to clarify that the key indicator in a monitoring

hole is the "zone of saturation" rather than simply "water," and to clarify how the saturation zone is measured. The revised definition is consistent with the revised definition in the Department's subdivision rules at ARM 17.36.101. This revision is necessary to provide guidance to reviewing authorities and the public regarding measurement of seasonally high groundwater.

The definition of "wastewater" is revised to be consistent with the definition of the term in the Department's subdivision rules at ARM 17.36.101. No substantive changes are intended, except that deleting the word "combination" clarifies that the wastes listed do not need to occur in combination for the water to be classified as wastewater.

ARM 17.36.907(1) and (2). The proposed amendments replace references to Circulars WQB-4, WQB-5, and WQB-6 with a reference to the new Circular DEQ-4. The effect of the amendments are to require that wastewater systems be designed in accordance with Circular DEQ-4. These amendments are necessary to adopt Circular DEQ-4 for use as a minimum standard by local boards of health. The statement of necessity for the provisions of Circular DEQ-4 are set out above.

The proposed amendment to ARM 17.36.907(2)(a) deletes a provision regarding innovative alternative systems. That terminology will no longer be used in Circular DEQ-4. The amendment is necessary to eliminate unnecessary rule provisions.

ARM 17.36.907(5), (6), and (7). The proposed amendments consist of new sections that adopt requirements transferred from former Circulars WQB-4, WQB-5, and WQB-6, without substantive changes. These amendments are necessary to retain the former circular requirements, which were deleted from Circular DEQ-4 with the intention that they be transferred to rule.

The transferred requirements address horizontal separation distances between septic tanks and features such as wells, buildings, and property lines. The amendments also adopt setback distances for absorption trenches. The amendments are necessary to implement Circular DEQ-4 without omitting key requirements from the prior circulars.

5. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than August 31, 2000. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5 p.m. August 31, 2000.

6. James B. Wheelis, attorney for the Board, has been designated to preside over and conduct the hearing.

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

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

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State July 17, 2000.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.38.202 through 17.38.208, 17.38.215 through 17.38.217, 17.38.225, 17.38.234, 17.38.239, and 17.38.244; the adoption of NEW RULE I; and the repeal of ARM 17.38.218, 17.38.226, 17.38.235, 17.38.255 through 17.38.260, 17.38.270 pertaining to public water supplies	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION AND REPEAL (PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On August 29, 2000, at 10:00 a.m. in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a hearing to consider the proposed amendment, adoption and repeal of the above-captioned rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., August 22, 2000, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The proposed new rule provides as follows:

NEW RULE I 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, 1999, edition of the Code of Federal Regulations (CFR);

(b) referred to a section of the Montana Code Annotated (MCA), the reference is to the 1999 edition of the MCA.

(2) Copies of materials adopted and incorporated by reference in this subchapter may be obtained from the Public Water Supply Section, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901, phone: (406) 444-4400.

(3) Copies of federal materials may also be obtained from the Superintendent of Documents, US Government Printing Office, Washington, DC 20402; or from the Environmental Protection Agency internet website at epa.gov/docs/epacfr40/chapt-I.info/subch-D/.

(4) Suppliers of public water supply systems shall comply with the portions of 40 CFR Parts 141 and 142 adopted and incorporated by reference in this subchapter.

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

4. Rules 17.38.202 through 17.38.208, 17.38.215 through 17.38.217, 17.38.225, 17.38.234, 17.38.239, and 17.38.244 as proposed to be amended provide as follows, with stricken matter interlined and new matter underlined:

17.38.202 DEFINITIONS In this subchapter ~~and in department Circulars PWS-1 (1998 edition), PWS-2 (1998 edition), PWS-3 (1998 edition) and PWS-4 (1998 edition)~~, 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 system" or "PWS;" "special irrigation district;" and "state." The terms "person" and "public water system," as used in the portions of 40 CFR Parts 141 and 142 adopted by reference in this subchapter, have the meanings of the terms "person" and "public water supply system," respectively, as defined below. The term "state," as used in the portions of 40 CFR Parts 141 and 142 adopted by reference in this subchapter, has the meaning of the term "state" as defined below.

(1) "Act," except as used in the portions of 40 CFR Part 141 referenced in this subchapter, means Title 75, chapter 6, part 1, MCA.

~~(2) "Action level" means the concentration of lead or copper in water, as specified in section 3.0 of department Circular PWS-4 (1998 edition), that determines followup requirements that a water system is required to complete. Department Circular PWS-4 addresses various requirements for inorganic contaminants and is adopted by reference herein. A copy may be obtained by contacting the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.~~

~~(3)~~(2) "Approved laboratory" means a laboratory licensed and approved by the Montana department of public health and human services to analyze water samples from public water supply systems to determine their compliance with maximum contaminant levels (MCLs) and other monitoring requirements of this subchapter.

~~(4) "Best available technology" or "BAT" means the best technology, treatment techniques or other means which the United States environmental protection agency (EPA) finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting MCLs for synthetic organic chemicals, any BAT must be at least as effective as technology relying on granular activated carbon.~~

~~(5) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.~~

~~(6) "Confluent growth" means a continuous bacterial growth covering either the entire filtration area of a membrane filter or a portion of a membrane filter in which bacterial colonies are not discrete.~~

~~(7) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.~~

~~(8) "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration that result in substantial particulate removal.~~

~~(9) "CT" or "CTcalc" means the residual disinfectant concentration (C) in milligrams per liter (mg/l) determined from a sample taken before or at the point of delivery to the first customer, times the corresponding disinfectant contact time (T) in minutes, i.e., "C"x"T". If a supplier applies disinfectants at more than one point prior to the public water supply system's first customer, the supplier must determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or total inactivation ratio.~~

~~(10) "$CT_{99.9}$" means the CT value required for 99.9% (3-log) inactivation of Giardia lamblia cysts. $CT_{99.9}$ for a variety of disinfectants and conditions appear in department Circular PWS-3, (1998 edition).~~

~~(11) "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which:~~

~~(a) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum); and~~

~~(b) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.~~

~~(12) "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation, that upon completion results in substantial particulate removal.~~

~~(13) "Disinfectant" means any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.~~

~~(14) "Disinfectant contact time" ("T" in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured.~~

~~(a) If only one "C" is measured, "T" is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at the point where residual disinfectant concentration ("C") is measured. Where more than one "C" is measured, "T" is:~~

~~(i) for the first measurement of "C", the time in minutes that it takes for water to move from the first or only~~

~~point of disinfectant application to a point before or at the point where the first "C" is measured, and~~

~~(ii) for subsequent measurements of "C", the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated.~~

~~(b) Disinfectant contact time in pipelines must be calculated as "plug flow" by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe.~~

~~(c) Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.~~

~~(15) "Disinfection" means a process that inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.~~

~~(16) "Domestic or other non-distribution system plumbing problem" means a bacteriological contamination problem in a public water supply system with more than one service connection that is limited to the specific service connection from which the contaminated sample was taken.~~

~~(17) "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).~~

~~(18) "EPA" means the United States environmental protection agency.~~

~~(19) "Filtration" means a process for removing particulate matter from water by passage through porous media.~~

~~(20) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.~~

~~(21) "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.~~

~~(22) "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.~~

~~(23) "Groundwater under the direct influence of surface water" means any water beneath the surface of the ground that the department determines to have:~~

~~(a) significant occurrences of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia; or~~

~~(b) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH in close correlation with climatological or surface water conditions.~~

~~(24) "Inactivation ratio" means the value derived when CTcalc is divided by $CT_{99.9}$. The sum of the inactivation ratios, or "total inactivation ratio", is calculated by adding together the inactivation ratio for each disinfection~~

~~sequence. A total inactivation ratio equal to or greater than 1.0 is assumed to provide a 3-log inactivation of Giardia lamblia cysts.~~

~~(25) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called legionnaires disease.~~

~~(26) "Man-made beta particle and photon emitters" means all radionuclides emitting beta particles or photons, or both, listed in Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69, except the daughter products of thorium-232, uranium-235, and uranium-238.~~

~~(27) "Maximum contaminant level" or "MCL" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water supply system.~~

~~(28) "Near the first service connection" means within the first 20% of all service connections in the public water supply system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.~~

~~(29)~~(3) "Person" means any individual, corporation, association, partnership, municipality, or political subdivision~~s~~ of the state or a federal agency.

~~(30) "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.~~

~~(31) "Point of disinfectant application" means the point where the disinfectant is applied such that water downstream of that point is not subject to recontamination by surface water runoff.~~

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

~~(a) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.~~

~~(b) "Non-community water system" means a public water supply system that is not a community water system.~~

~~(i) "Non-transient non-community water system" means a public water system that is not a community system and that regularly serves at least 25 of the same persons for at least 6 months a year.~~

~~(ii) "Transient non-community water system" means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least 6 months a year.~~

(5) "State," as used in the portions of 40 CFR Parts 141 and 142 adopted by reference and incorporated in this subchapter, means the Montana department of environmental quality with respect to regulation of public water supply systems for compliance with this subchapter, and the Montana department of public health and human services with respect to certification of laboratories for performing water sample analyses for public water supply systems as required in 40 CFR Part 141.

~~(33) "Point-of-entry treatment device" means a treatment device applied to the drinking water that enters a house or building for the purpose of reducing contaminants in the drinking water provided throughout the house or building.~~

~~(34) "Point-of-use treatment device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.~~

~~(35) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1/1000 of a rem.~~

~~(36) "Residual disinfectant concentration" ("C" in CT calculations) means the concentration of disinfectant measured in milligrams per liter (mg/l) in a representative sample of water.~~

~~(37) "SDWA" means the Safe Drinking Water Act, as amended, 42 USC section 300f through 300j-11.~~

~~(38) "Sanitary survey" means an on-site review of the water source, facilities, equipment, operation and maintenance of a public water supply system for the purpose of evaluating the adequacy for producing and distributing safe drinking water.~~

~~(39) "Satisfactory bacteriological sample" means less than one coliform found per 100 ml sample or less than one portion positive for coliform organisms when five or more portions are examined.~~

~~(40) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.~~

~~(41)"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 meters per hour) resulting in substantial particulate removal by physical and biological mechanisms.~~

~~(42) "Standard sample" means the 100 milliliter (ml) aliquot of water that is examined for the presence of coliform bacteria regardless of the analytical method used.~~

~~(43) "Supplier of water" or "supplier" means any person who owns or operates a public water supply system.~~

~~(44) "Surface water" means all water that is open to the atmosphere and subject to surface runoff.~~

~~(45) "System with a single service connection" means a system which supplies drinking water to consumers by a single service line.~~

~~(46) "Too numerous to count" (TNTC) means that the total number of bacterial colonies exceeds 200 on a 47-millimeter (mm) diameter membrane filter used for coliform detection.~~

~~(47) "Trihalomethane (THM)" means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.~~

~~(48) "Total trihalomethanes (TTHM)" means the sum of the concentration in milligrams per liter of the trihalomethane compounds (chloroform, dibromochloromethane, bromodichloromethane and tribromomethane), rounded to two significant figures.~~

~~(49) "Virus" means a virus of fecal origin that is infectious to humans by waterborne transmission.~~

~~(50) "Waterborne disease outbreak" means the significant occurrence of acute infectious illness that is epidemiologically associated with the ingestion of water from a public water supply system, as determined by the department or appropriate local, state or federal agency.~~

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

17.38.203 MAXIMUM INORGANIC CHEMICAL CONTAMINANT LEVELS

(1) ~~Maximum contaminant levels for inorganic contaminants (IOCs)~~are set forth in the table below. ~~The maximum contaminant levels apply to various public water supply systems as denoted in (2) of this rule.~~ The board hereby adopts and incorporates by reference 40 CFR 141.11, 141.60(b), 141.62(a), 141.62(b), and 141.65, which set forth maximum contaminant levels for inorganic contaminants and residual disinfectant levels, and 40 CFR 141.80(c)(1) and 40 CFR 141.80(c)(2), which set forth the action levels for lead and copper.

~~Table I~~

~~Inorganic Contaminants (IOCs)~~	~~MCL (in mg/L)~~
~~(a) Fluoride~~	~~4.0~~
~~(b) Asbestos~~	~~7 million fibers/liter (longer than 10 μm)~~
~~(c) Barium~~	~~2~~
~~(d) Cadmium~~	~~0.005~~
~~(e) Chromium~~	~~0.1~~
~~(f) Mercury~~	~~0.002~~
~~(g) Nitrate~~	~~10 (as Nitrogen)~~
~~(h) Nitrite~~	~~1 (as Nitrogen)~~
~~(i) Total Nitrate + Nitrite~~	~~10 (as Nitrogen)~~
~~(j) Selenium~~	~~0.05~~
~~(k) Antimony~~	~~0.006~~
~~(l) Beryllium~~	~~0.004~~
~~(m) Cyanide (as free Cyanide)~~	~~0.2~~
~~(n) Nickel~~	~~0.1~~
~~(o) Thallium~~	~~0.002~~
~~(p) Arsenic~~	~~0.05~~
~~Inorganic Contaminant~~	~~Action Level (in mg/L)~~
~~(q) Lead~~	~~0.015~~
~~(r) Copper~~	~~1.3~~

~~(2)(a) The maximum contaminant levels for fluoride and arsenic apply only to community water systems.~~

~~(b) The maximum contaminant levels for nitrate, nitrite, and total nitrate + nitrite apply to all public water supply systems.~~

~~(c) The maximum contaminant levels and action levels for all other inorganic chemicals apply only to community water systems and non-transient non-community water systems.~~

~~(d) A public water supply system may not exceed a maximum contaminant level that applies to the system.~~

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

17.38.204 MAXIMUM ORGANIC CHEMICAL CONTAMINANT LEVELS

(1) ~~A community or non-transient non-community water system may not exceed the following maximum contaminant levels for synthetic organic contaminants:~~ The board hereby adopts and incorporates by reference 40 CFR 141.12, 141.60, 141.61(a), 141.61(b), 141.64(a), and 141.64(b), which set forth maximum contaminant levels for synthetic organic contaminants, volatile organic contaminants, and disinfection byproducts.

~~Table II~~

~~Chemical Abstract Services No.~~	~~Contaminant~~	~~MCL in mg/L~~
~~(a) 15972-60-8~~	~~Alachlor~~	~~0.002~~
~~(b) 116-06-3~~	~~Aldicarb[1]~~	
~~(c) 1646-87-3~~	~~Aldicarb sulfoxide[1]~~	
~~(d) 1646-87-4~~	~~Aldicarb sulfone[1]~~	
~~(e) 1912-24-9~~	~~Atrazine~~	~~0.003~~
~~(f) 1563-66-2~~	~~Carbofuran~~	~~0.04~~
~~(g) 57-74-9~~	~~Chlordane~~	~~0.002~~
~~(h) 96-12-8~~	~~Dibromochloropropane~~	~~0.0002~~
~~(i) 94-75-7~~	~~2,4-D~~	~~0.07~~
~~(j) 106-93-4~~	~~Ethylene dibromide~~	~~0.00005~~
~~(k) 76-44-8~~	~~Heptachlor~~	~~0.0004~~
~~(l) 1024-57-3~~	~~Heptachlor epoxide~~	~~0.0002~~
~~(m) 58-89-9~~	~~Lindane~~	~~0.0002~~
~~(n) 72-43-5~~	~~Methoxychlor~~	~~0.04~~
~~(o) 1336-36-3~~	~~Polychlorinated biphenyls~~	~~0.0005~~
~~(p) 87-86-5~~	~~Pentachlorophenol~~	~~0.001~~
~~(q) 8001-35-2~~	~~Toxaphene~~	~~0.003~~
~~(r) 93-72-1~~	~~2,4,5-TP~~	~~0.05~~
~~(s) 50-32-8~~	~~Benzo[a]pyrene~~	~~0.0002~~
~~(t) 75-99-0~~	~~Dalapon~~	~~0.2~~
~~(u) 103-23-1~~	~~Di(2-ethylhexyl) adipate~~	~~0.4~~
~~(v) 117-81-7~~	~~Di(2-ethylhexyl) phthalate~~	~~0.006~~
~~(w) 88-85-7~~	~~Dinoseb~~	~~0.007~~
~~(x) 85-00-7~~	~~Diquat~~	~~0.02~~
~~(y) 145-73-3~~	~~Endothall~~	~~0.1~~
~~(z) 72-20-8~~	~~Endrin~~	~~0.002~~
~~(aa) 1017-53-6~~	~~Glyphosate~~	~~0.7~~
~~(ab) 118-74-1~~	~~Hexachlorobenzene~~	~~0.001~~
~~(ac) 77-47-4~~	~~Hexachlorocyclopentadiene~~	~~0.05~~
~~(ad) 23135-22-0~~	~~Oxamyl (Vydate)~~	~~0.2~~

~~(ae) 1918-02-1~~	~~Picloram~~	~~0.5~~
~~(af) 122-34-9~~	~~Simazine~~	~~0.004~~
~~(ag) 1746-01-6~~	~~2,3,7,8-TCDD (Dioxin)~~	~~3 x 10^{-8}~~

~~[1] The EPA has subjected the Aldicarb MCLs to an "administrative stay" as a result of litigation; therefore, these aldicarbs are presently unregulated.~~

~~(2) A community or non-transient non-community water system that uses unfiltered surface water or unfiltered groundwater under the direct influence of surface water as a source, or that serves a population of 10,000 or more individuals and adds a disinfectant to the water may not exceed the maximum contaminant level for total trihalomethanes of 0.10 mg/l.~~

~~(3) A community or non-transient non-community water system may not exceed the following volatile organic chemical (VOC) maximum contaminant levels:~~

~~Table III~~

~~Chemical Abstract Services No.~~	~~VOC Contaminant~~	~~MCL in mg/L~~
~~(a) 75-01-4~~	~~Vinyl Chloride~~	~~0.002~~
~~(b) 71-43-2~~	~~Benzene~~	~~0.005~~
~~(c) 56-23-5~~	~~Carbon tetrachloride~~	~~0.005~~
~~(d) 107-06-2~~	~~1,2-Dichloroethane~~	~~0.005~~
~~(e) 79-01-6~~	~~Trichloroethylene~~	~~0.005~~
~~(f) 106-46-7~~	~~para-Dichlorobenzene~~	~~0.075~~
~~(g) 75-35-4~~	~~1,1-Dichloroethylene~~	~~0.007~~
~~(h) 71-55-6~~	~~1,1,1-Trichloroethane~~	~~0.2~~
~~(i) 156-59-2~~	~~cis-1,2-Dichloroethylene~~	~~0.07~~
~~(j) 78-87-5~~	~~1,2-Dichloropropane~~	~~0.005~~
~~(k) 100-41-4~~	~~Ethylbenzene~~	~~0.7~~
~~(l) 108-90-7~~	~~Monochlorobenzene~~	~~0.1~~
~~(m) 95-50-1~~	~~o-Dichlorobenzene~~	~~0.6~~
~~(n) 100-42-5~~	~~Styrene~~	~~0.1~~
~~(o) 127-18-4~~	~~Tetrachloroethylene~~	~~0.005~~
~~(p) 108-88-3~~	~~Toluene~~	~~1~~
~~(q) 156-60-5~~	~~Trans-1,2-Dichloroethylene~~	~~0.1~~
~~(r) 1330-20-7~~	~~Xylenes (total)~~	~~10~~
~~(s) 75-09-2~~	~~Dichloromethane~~	~~0.005~~
~~(t) 120-82-1~~	~~1,2,4-Trichlorobenzene~~	~~0.07~~
~~(u) 79-00-5~~	~~1,1,2-Trichloroethane~~	~~0.005~~

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

17.38.205 MAXIMUM TURBIDITY CONTAMINANT LEVELS

(1) The board hereby adopts and incorporates by reference 40 CFR 141.13 and 141.73, which set forth maximum contaminant levels for turbidity, except for the following changes:

(a) ~~This section is applicable to public water supply systems that use unfiltered surface water or unfiltered ground~~

~~water under the direct influence of surface water and that the department has determined must install filtration. The requirements of this section do not apply to a public water supply system that has installed a department-approved filtration system.~~ The terms "one turbidity unit" and "1 NTU" mean 1.0 nephelometric turbidity unit, and the terms "five turbidity units" and "5 NTU" mean 5.0 nephelometric turbidity units for the purposes of this subchapter.

(b) ~~A public water supply system that uses surface water in whole or in part may not exceed the following maximum contaminant levels for turbidity measured at a representative entry point to the distribution system:~~

~~(i) 1.0 nephelometric turbidity unit (NTU), as determined by a monthly average, except that a level not exceeding 5.0 NTU may be allowed if the supplier of water can demonstrate to the department that the higher turbidity does not do any of the following:~~

~~(A) interfere with disinfection;~~

~~(B) prevent maintenance of an effective disinfectant agent throughout the distribution system; or~~

~~(C) interfere with microbiological determinations.~~

~~(ii) 5.0 NTU based on an average for 2 consecutive days.~~

~~(iii) If results of turbidity analyses indicate the maximum contaminant level has been exceeded, a second sample must be taken within 1 hour. The repeat sample, and not the initial one, must be used in calculating the monthly average.~~

~~(2) This section applies to public water supply systems using surface water or groundwater under the direct influence of surface water.~~ The following replace 40 CFR 141.73(a)(1) and 141.73(a)(2), respectively:

(i) The turbidity level of representative samples of the system's filtered water, measured at a representative entry point to the distribution system ~~must be less than or equal to~~ may not exceed 0.5 NTU in at least 95% of the measurements taken each month, and ~~at no time~~ may not at any time exceed 1.0 NTU.

(ii) The turbidity level of representative samples of a system's effluent from individual filters, measured at a point prior to mixing with effluent from other filters or other sources, ~~must be less than or equal to~~ may not exceed 0.5 NTU in at least 95% of the measurements taken each month, and ~~at no time~~ may not at any time exceed 5.0 NTU. This requirement is not violated if the turbidity reading for the effluent from each individual filter is the first reading of the month that exceeds 0.5 NTU and the individual filter is taken off-line within 24 hours after the sample analysis that shows the exceedance.

~~(b) For systems using slow sand filtration:~~

~~(i) The turbidity level of representative samples of a system's filtered water, measured at a representative entry point to the distribution system, must be less than or equal to 1.0 NTU in at least 95% of the measurements taken each month. However, if the system demonstrates to the department that there is no significant interference with disinfection or~~

~~microbiological determinations at a higher turbidity level, the department may substitute a higher turbidity limit for that system.~~

~~(ii) The turbidity level of representative samples of a system's filtered water may not at any time exceed 5.0 NTU.~~

~~(c) For systems using diatomaceous earth filtration:~~

~~(i) The turbidity level of representative samples of a system's filtered water, measured at a representative entry point to the distribution system must be less than or equal to 1.0 NTU in at least 95% of the measurements taken each month, and at no time exceed 5.0 NTU.~~

~~(ii) The turbidity level of representative samples of a system's individual filter effluent, measured at a point prior to mixing with effluent from other filters or other sources, must be less than or equal to 1.0 NTU in at least 95% of the measurements taken each month. This requirement is not violated if the turbidity reading for the effluent from each individual filter is the first reading of the month that exceeds 1.0 NTU and the individual filter is taken off-line within 24 hours after the sample analysis that shows the exceedance.~~

~~(d) For systems using other filtration technologies, a public water supply system may use a filtration technology not listed in (a)-(c) above if the supplier demonstrates to the satisfaction of the department, using pilot plant studies or other means approved by the department, that the alternative filtration technology, in combination with disinfection treatment, meets the requirements of ARM 17.38.208(4)(c). For a system that makes this demonstration, the requirements of (b) above apply.~~

~~(e) For purposes of this section, an "event" means a series of consecutive days during which at least 1 turbidity measurement each day exceeds 5.0 NTU. A public water supply system that uses surface water or groundwater under the direct influence of surface water in whole or in part and that does not filter the water may not exceed 5.0 NTU in representative samples of the source water immediately prior to the first or only point of disinfectant application unless:~~

~~(i) the department determines that the event was caused by circumstances that were unusual and unpredictable, and~~

~~(ii) no more than 2 events have occurred in the past 12 months in which the system has served water to the public and no more than 5 events have occurred in the past 120 months the system has served water to the public.~~

~~(3) A supplier must determine compliance with the MCL for turbidity in (1) and (2) of this rule for each month in which the supplier is required to monitor for turbidity.~~

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

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

17.38.206 MAXIMUM RADIOLOGICAL CONTAMINANT LEVELS ~~No community water system may exceed the following maximum radiological contaminant levels:~~

	Constituent	Level pCi per liter
~~(1)~~	~~Combined radium-226 and radium-228~~	~~5~~
~~(2)~~	~~Gross alpha particle activity (including radium-226 but excluding radon and uranium)~~	~~15~~
~~(3)~~	~~Tritium~~	~~20,000~~
~~(4)~~	~~Strontium-90~~	~~8~~
~~(5)~~	~~Gross beta radioactivity~~	~~50~~

~~(6) The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water may not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.~~

(1) The board hereby adopts and incorporates by reference 40 CFR 141.15 and 141.16, which set forth maximum contaminant levels for radiological contaminants.

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

17.38.207 MAXIMUM MICROBIOLOGICAL CONTAMINANT LEVELS

(1) ~~A public water supply system may not exceed the following maximum microbiological contaminant levels:~~

~~(a) For monthly and annual MCL's for microbiological contaminants:~~

~~(i) a system which collects at least 40 samples per month may have no more than 5.0% of the samples collected during a month analyzed as total coliform-positive; and~~

~~(ii) a system which collects fewer than 40 samples/month may have no more than one sample collected during a month analyzed as total coliform-positive.~~

~~(b) In addition to the requirements of (a) above, a fecal coliform-positive repeat sample or E. coli-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample is a violation of this rule. (For purposes of the public notification requirements in department Circular PWS-2 (1998 edition), this is a violation that may pose an acute risk to health.)~~ The board hereby adopts and incorporates by reference 40 CFR 141.63(a), 141.63(b), and 141.63(c), which set forth maximum contaminant levels for microbiological contaminants.

(2) ~~The supplier of a public water supply system must determine compliance with the MCL for microbiological contaminants stated in (1)(a) and (b) of this rule for each month in which it is required to monitor for total coliforms.~~

~~(3)~~ Failure to submit the required number of repeat samples for ~~the~~ a public water supply system is a violation of the coliform bacteria MCL set forth in ~~(1)(a) of this rule~~ 40

CFR 141.63, and subjects the system to the required public notification as described in department Circular PWS-2 (June 1998 edition), and additional routine sampling specified in ARM 17.38.215.

(4) The department hereby adopts and incorporates by reference department Circular PWS-2 (1998 edition), which sets forth public notification requirements for suppliers. A copy may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

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

17.38.208 TREATMENT TECHNIQUES--FILTRATION AND DISINFECTION REQUIREMENTS (1) Unless otherwise specified in these rules, each public water supply system with a surface water source or a ground water source under the direct influence of surface water must provide treatment which meets the treatment technique requirements of this rule. The treatment technique requirements consist of installing and properly operating water treatment processes that reliably achieve: The board hereby adopts and incorporates by reference 40 CFR 141.70(a), which sets forth general surface water treatment requirements.

(a) at least 99.9% (3-log) inactivation or removal and inactivation of Giardia lamblia cysts between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer; and

(b) at least 99.99% (4-log) inactivation or removal and inactivation of viruses between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

(2) A public water supply system using a surface water source or a groundwater source under the direct influence of surface water is considered to be in compliance with the requirements of (1) of this rule if the system is operated by qualified personnel certified under the provisions of Title 37, chapter 42, MCA, and: 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) the system meets all of the requirements for avoiding filtration and the requirements for disinfection of an unfiltered surface source as described in department Circular PWS-3 (1998 edition); or Only surface water sources from watersheds classified as A-Closed in ARM 17.30.621 may be considered for use as a public water supply source without filtration.

(b) the system filters and meets the turbidity requirements of ARM 17.38.205 and the disinfection requirements of this rule. "5 NTU" means "5.0 nephelometric turbidity units" for the purposes of this subchapter.

(c) The requirements concerning watershed protection

listed in 40 CFR 141.71(b)(2)(i) through 141.71(b)(2)(iii) are replaced by the following items (i) through (iii), respectively:

(i) characterize the watershed hydrology and land ownership by:

(A) documenting land-ownership areas and specific landowners;

(B) identifying point and non-point sources of pollution discharge, including roads and drainage ditches;

(C) identifying the location of septic tanks and other waste disposal facilities and their proximity to surface water; and

(D) producing a documented watershed map depicting all of the items in (2)(c)(i) through (iii) of this rule and assigning a reference number or other code by which to identify specific areas and impacts.

(ii) identify watershed characteristics and activities that may have an adverse effect on source water quality by:

(A) documenting activities and specific land uses in all public areas on the watershed map, including pollution control measures practiced by the owner-agency and the population of users involved;

(B) identifying activities and improvements on all private lands (e.g., buildings; grazing or other agricultural uses and numbers of livestock involved; animal waste management practices; disposal of human wastes; population involved on a maximum and average-day basis; and use of fertilizers, pesticides and herbicides); and

(C) identifying seasonal, short-term and year-round impacts.

(iii) monitor the occurrence of activities that may have an adverse effect on source water quality by:

(A) denoting minimum surveillance, monitoring methods and frequency; and

(B) denoting the agency, contract personnel or other party responsible for assessing impacts and the responsible party's qualifications.

(d) The first two sentences in the last paragraph of 40 CFR 141.71(b)(2) are replaced with the following:

"At a minimum, the supplier of a public water supply system shall demonstrate through land ownership or department-approved written agreements with landowners within the watershed, or both, that it can control all human activities that may have an adverse impact on the microbiological quality of the source water or that may interfere with disinfection treatment. Adverse activities include, but are not limited to: recreational activities such as swimming, boating, camping, fishing, hiking, and hunting; and sewage and septic tank discharges. A supplier shall also demonstrate through land ownership or department-approved written agreements with landowners within the watershed, or both, that recreational activities such as fishing, swimming, boating and camping on the terminal water supply reservoir are prohibited. A terminal

water supply reservoir is the area providing the storage of water immediately prior to treatment and delivery to the distribution system. A supplier shall control access on roads through land ownership or department-approved written agreements with landowners within the watershed. A supplier shall submit an annual report to the department that identifies any special concerns about the watershed and how the concerns are being addressed, describes activities in the watershed that affect water quality, and projects the adverse activities expected to occur in the future and describes how the supplier expects to address them."

(e) The board hereby adopts and incorporates by reference 40 CFR 141.171, which sets forth requirements, in addition to the requirements in 40 CFR 141.71, for avoiding filtration.

~~(3)(a) A public water supply system using a surface source or a ground water source under the direct influence of surface water is in violation of the treatment techniques requirement imposed by this rule if the system:~~

~~(i) fails to meet any one of the criteria in (2) of this rule or the department has determined that filtration is required; or~~

~~(ii) fails to install filtration by June 29, 1993, or 18 months after the department determines that filtration is required, whichever is later.~~

~~(b) A system that has installed filtration is in violation of a treatment technique requirement if the system violates the MCL specified in ARM 17.38.205 for turbidity.~~

~~(c) Any system using surface water or ground water under the direct influence of surface water that is identified as a source of a waterborne disease outbreak is in violation of the treatment technique requirements imposed by this rule.~~ 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 hereby adopts and incorporates by reference the following:

(a) ~~A supplier that uses a surface water source and does not provide treatment by filtration must provide the disinfection treatment specified in department Circular PWS-3 (1998 edition), beginning December 30, 1991, unless the department determines that filtration is required.~~ 40 CFR 141.61(b), which sets forth best available technologies (BATs) for synthetic and volatile organic contaminants;

(b) ~~A supplier that uses a ground water source under the direct influence of surface water and does not provide treatment by filtration must provide the disinfection treatment specified in department Circular PWS-3 (1998 edition), beginning December 30, 1991, or 18 months after the department determines that the ground water source is under~~

~~the influence of surface water, whichever is later, unless the department has determined that filtration is required.~~ 40 CFR 141.62(c), which sets forth BATs for inorganic contaminants;

(c) ~~A supplier that uses a surface water source that provides filtration treatment or uses a ground water source under the direct influence of surface water and provides filtration treatment must provide the disinfection treatment specified in (e) below beginning June 29, 1993, or beginning when filtration is installed, whichever is later. Failure to meet any requirement of this section after the specified date is in violation of the treatment technique requirements imposed by this rule.~~ 40 CFR 141.63(d), which sets forth BATs for microbiological contaminants;

(d) ~~If the department has determined that filtration is required for a public water supply system, the system must comply with any interim disinfection requirements the department deems necessary prior to installation of filtration.~~ 40 CFR 141.64(c), which sets forth BATs for disinfection byproducts;

~~(e) Each public water supply system that provides filtration treatment must provide disinfection treatment as follows:~~

~~(i) The disinfection treatment must be sufficient to ensure compliance with (1) of this rule.~~

~~(ii) The residual disinfectant concentration in the water entering the distribution system cannot be less than 0.2 milligrams per liter (mg/l) for more than 4 hours.~~

~~(iii) The residual disinfectant concentration in the distribution system, measured as free chlorine, total chlorine, combined chlorine, or chlorine dioxide cannot be less than 0.2 mg/l using the DPD method or 0.1 mg/l using the amperometric titration method in more than 5.0% of the samples each month for any 2 consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500 per milliliter, measured as heterotrophic plate count (HPC), is an acceptable substitute for disinfectant residual for purposes of determining compliance with this requirement. The equation in ARM 17.38.235(3)(b)(xv) must be used to calculate compliance with this requirement.~~

~~(iv) If the department determines, based on site-specific considerations, that a supplier of water is precluded from having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions and that the system is providing adequate disinfection in the distribution system, the requirements of (iii) above do not apply.~~

(e) 40 CFR 141.81, which sets forth the applicability of lead and copper corrosion control treatment steps to small, medium and large water systems;

(f) 40 CFR 141.82, which sets forth a description of the lead and copper corrosion control requirements;

(g) 40 CFR 141.83, which sets forth lead and copper source water treatment requirements;

(h) 40 CFR 141.84, which sets forth lead service line replacement requirements;

(i) 40 CFR Part 141, Subpart J, which sets forth requirements for the use of non-centralized treatment devices;

(j) 40 CFR Part 141, Subpart K, which sets forth treatment technique requirements for acrylamide and epichlorohydrin;

(k) 40 CFR 141.135, which sets forth treatment technique requirements for control of disinfection byproduct precursors;

(l) 40 CFR 141.170, which sets forth general treatment requirements in addition to the requirements in 141.70 for public water suppliers that use surface water; and

(m) 40 CFR 141.173(b), which sets forth treatment requirements, in addition to the requirements in 40 CFR 141.72, for public water suppliers that use filtered surface water.

~~(5) The department hereby adopts and incorporates by reference department Circular PWS-3 (1998 edition), which sets forth criteria to avoid filtration of a surface water source or a groundwater source under the direct influence of surface water A copy of department Circular PWS-3 (1998 edition) may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

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

17.38.215 BACTERIOLOGICAL QUALITY SAMPLES (1) The board hereby adopts and incorporates by reference the table in 40 CFR 141.21(a)(2), which sets forth total coliform monitoring frequency requirements.

(a) The minimum monitoring frequency for total coliforms for community and non-transient non-community public water supply systems is based on the average daily population served by the system during the month of peak use, and must be in accordance with the ~~following~~ table~~:~~ in 40 CFR 141.21(a)(2).

~~TOTAL COLIFORM MONITORING FREQUENCY FOR PUBLIC WATER SUPPLY SYSTEMS~~

~~Population served:~~	~~Minimum number of samples per month~~
~~1 to 1,000~~	~~1~~
~~1,001 to 2,500~~	~~2~~
~~2,501 to 3,300~~	~~3~~
~~3,301 to 4,100~~	~~4~~
~~4,101 to 4,900~~	~~5~~
~~4,901 to 5,800~~	~~6~~
~~5,801 to 6,700~~	~~7~~
~~6,701 to 7,600~~	~~8~~
~~7,601 to 8,500~~	~~9~~
~~8,501 to 12,900~~	~~10~~
~~12,901 to 17,200~~	~~15~~
~~17,201 to 21,500~~	~~20~~

~~21,501 to 25,000 25~~
~~25,001 to 33,000 30~~
~~33,001 to 41,000 40~~
~~41,001 to 50,000 50~~
~~50,001 to 59,000 60~~
~~59,001 to 70,000 70~~
~~70,001 to 83,000 80~~
~~83,001 to 96,000 90~~
~~96,001 to 130,000 100~~

(b) The supplier of water for a transient non-community water system shall sample according to the table in ~~(a) above~~ 40 CFR 141.21(a)(2), except that a supplier of water for a transient non-community water system that uses only ground water that is not under the direct influence of surface water and serves a maximum daily population of 1,000 persons or fewer shall sample for coliform bacteria in each calendar month during which the system provides water to the public unless allowed to sample quarterly as provided in (1)(c) or (d) below. The department may not, however, grant permission to sample quarterly pursuant to (1)(c) for a minimum of 24 months of system operation after a system initially becomes regulated under this rule.

(c) remains the same.

(d) A water supplier who is allowed to sample quarterly pursuant to (1)(c) above or who was authorized to conduct quarterly sampling on June 3, 1999, may continue to sample quarterly except that:

(i) through (iii) remain the same.

(iv) a supplier who constructs a system or system components without approval or who has modified a system without approval ~~pursuant to~~, in violation of 75-6-112, MCA, and ARM 17.38.101, shall sample at least monthly, or more frequently if required by the department pursuant to (1)(e) below, until the supplier has submitted plans and specifications in accordance with 75-6-112, MCA, and ARM 17.38.101, ~~and~~ the system modifications have been approved and the department has reduced sampling frequency pursuant to (1)(c) above.

(v) remains the same.

(vi) a supplier that does not maintain or operate a system in accordance with the requirements of this chapter may be required to sample monthly, or more frequently if required by the department pursuant to (1)(e) below, ~~if~~ when the department determines that the violation may affect the microbiological quality of the water supply system. If the department determines that appropriate improvements in maintenance and operation have been implemented, it may allow the supplier to monitor in accordance with (1)(c) above. A supplier shall implement any increase in sampling frequency immediately upon receipt of written notice from the department of the increase ~~from the department~~.

(e) The department may increase the required sampling frequency of any public water supply system based upon

sampling results or other conditions that indicate a risk to the health of the water users. The department shall provide the supplier with a written explanation ~~to the supplier~~ of any revised sampling requirements. A supplier shall implement any increase in sampling frequency immediately upon receipt of written notice of the increase from the department.

(2) ~~Each supplier of a public water supply system must collect routine samples at regular time intervals throughout the month, except that a system which uses only ground water (except ground water under the direct influence of surface water) and serves a maximum daily population of 4,900 persons or fewer, may collect all required routine samples on a single day if the samples are taken from different sites.~~ The board hereby adopts and incorporates by reference 40 CFR 141.21, which sets forth monitoring and analytical requirements for coliform bacteria, except as modified in the sections that follow.

~~(3) A supplier of a public water supply system that uses surface water or ground water under the direct influence of surface water and does not practice filtration in compliance with department rules must collect at least 1 sample near the first service connection each day the turbidity level of the source water exceeds 1.0 NTU and have the sample analyzed for the presence of total coliform bacteria. This requirement may be waived by the department for a public water supply system that uses surface water and does not practice filtration if the supplier is in compliance with a department administrative order, court order or court ordered consent decree to provide filtration and if the supplier agrees to comply with an alternative monitoring plan acceptable to the department. When 1 or more turbidity measurements in any day exceed 1.0 NTU, the supplier must collect this coliform bacteria sample within 24 hours of the first exceedance, unless the department determines that the system for logistical reasons outside the supplier's control cannot have the sample analyzed within 30 hours of collection. These sample results must be included in determining compliance with the MCL for microbiological contaminants under ARM 17.38.207.~~

(3) 40 CFR 141.21(a)(2) is not adopted, except for the table adopted in (1)(a). 40 CFR 141.21(a)(3) is not adopted.

(4) 40 CFR 141.21(a)(6) is replaced with the following:

"A special purpose sample, including a sample taken to determine whether adequate disinfection has occurred after pipe placement or repair, may not be taken from a part of the public water supply distribution system that is actively serving the public. Repeat samples taken pursuant to ~~(5)~~ 40 CFR 141.21(b) ~~of this rule~~ are not special purpose samples."

(5) ~~If a routine sample is total coliform-positive:~~ 40 CFR 141.21(b)(5) is replaced with the following:

~~(a) the supplier must begin submitting a set of repeat samples within 24 hours after notification of the positive result. A supplier that collects more than 1 routine sample per month must collect no fewer than 3 repeat samples for each total coliform-positive sample. A supplier who normally~~

~~collects one routine sample per month or less must collect no fewer than 4 repeat samples for each total coliform-positive sample found. The department may extend the 24-hour limit for a specified time period if the supplier has a logistical problem in collecting the repeat samples that is beyond the supplier's control. After a supplier collects a routine sample and before the supplier learns the results of the analysis of that sample, if the supplier collects another routine sample or samples from within five service connections of the initial sample and the initial sample after analysis is found to contain coliform bacteria, then the supplier may count the subsequent sample or samples as a repeat sample instead of as a routine sample.~~

~~(b) The supplier must collect at least one repeat sample from the tap where the original total coliform-positive sample was taken, at least one repeat sample at a tap within five service connections upstream of the original sampling site, and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a total coliform-positive sample is at the end of the distribution system, or one service connection from the end of the distribution system, the department may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site.~~

~~(c) The supplier must collect all repeat samples on the same day, except that the department may allow a system with a single service connection to collect the required set of repeat samples over a 4-day period.~~

~~(d) If one or more repeat samples in the set is total coliform-positive, the supplier must collect an additional set of repeat samples in the manner specified in (a) through (c) above. Collection of the additional samples must begin within 24 hours of receipt of notice of the positive result, unless the department extends the limit as provided in (a) above. The supplier must repeat this process until either total coliform bacteria are not detected in one complete set of repeat samples or the supplier determines that the microbiological contaminant MCL specified in ARM 17.38.207 has been exceeded and notifies the department.~~

~~(e)~~ "If a supplier who collects fewer than five routine samples per month has one or more total coliform-positive samples and the department does not invalidate the sample or samples under ~~(6) of this rule~~ 40 CFR 141.21(c), ~~he~~ the supplier shall ~~must~~ collect at least five routine samples during the next month the system provides water to the public. At least one of these routine samples must be collected from the site where the previous month's contaminated sample was taken unless that site was invalidated according to ~~(6)(a)(ii) of this rule.~~ 40 CFR 141.21(c)(1)(ii)."

~~(f) All routine and repeat sample results not invalidated by the department must be included in determining compliance with the microbiological contaminant MCLs specified in ARM 17.38.207. Repeat samples may be included in~~

~~determining compliance with the minimum number of samples per month required under (1)(a) of this rule.~~

~~(6) A total coliform-positive sample that is invalidated according to this section may not be used to meet the minimum monitoring requirements of this subsection.~~

~~(a) The department may invalidate a total coliform-positive sample only if:~~

~~(i) the laboratory establishes that improper sample analysis caused the total coliform-positive result;~~

~~(ii) the department, based on results of the repeat samples, determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem. The department may not invalidate a sample on the basis of repeat sample results unless all repeat samples collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected from within five service connections of the original tap are total coliform-negative (e.g., the department may not invalidate a total coliform-positive sample based on repeat samples if the repeat samples are all total coliform-negative, or if the public water supply system has only one service connection);~~

~~(iii) the department has substantial grounds to believe that a total coliform-positive result is caused by a circumstance or condition that does not reflect water quality in the distribution system. In this case, the supplier must collect all repeat samples required under (5) of this rule, and the department must use the repeat sample analysis to determine compliance with the MCL specified in ARM 17.38.207. The department's decision to invalidate a total coliform-positive sample must be documented in writing with the rationale for the decision stated, and approved by the supervisor of the department official who recommended the decision. The department must make this document available to the EPA and the public. The written document must also state the specific cause of the total coliform-positive sample and what action the system has taken or will take to correct the problem.~~

~~(b) The department may not invalidate a sample based on repeat samples if the repeat samples are all total coliform-negative or if improper sample collection procedures were used.~~

~~(c) A laboratory must invalidate a sample unless total coliform bacteria are detected, if the sample:~~

~~(i) produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the multiple-tube fermentation technique);~~

~~(ii) produces a turbid culture in the absence of an acid reaction in the presence-absence (P-A) coliform test; or~~

~~(iii) exhibits confluent growth or produces colonies too numerous to count using an analytical method with a membrane filter (e.g., membrane filter technique);~~

~~(d) If the interference described in (c) above occurs, the supplier must collect another sample from the same~~

~~location as the original sample within 24 hours after notification by the laboratory and have it analyzed for the presence of total coliform bacteria and heterotrophic plate count. The supplier must continue to resample within 24 hours of notification and have the samples analyzed until the system shows a valid result. The department may waive the 24-hour time limit on a case-by-case basis.~~

~~(7) If any routine or repeat sample is total coliform-positive, the supplier must analyze that total coliform-positive culture medium to determine if fecal coliforms are present, except that the system may test for E. coli in lieu of fecal coliforms. If fecal coliforms or E. coli are present, the supplier must notify the department on the same day when the system is notified of the test result, unless the system is notified of the result after the department office is closed, in which case the supplier must notify the department before the end of the next business day.~~

~~(8)~~(6) A supplier shall collect ~~At~~ at least two samples ~~shall~~ that must be analyzed for coliform bacteria from any new source of water supply to demonstrate compliance with this subchapter before the source is connected to a public water supply system.

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

17.38.216 CHEMICAL AND RADIOLOGICAL QUALITY SAMPLES

(1) ~~Except as provided in (2) below,~~ A supplier of water shall collect water ~~served to consumers~~ samples taken from each entry point location serving a community and non-transient non-community public water supply system~~, which may be a mixture from several sources, must be analyzed~~ for analysis by an approved laboratory of the following inorganic chemicals:

(a) through (k) remain the same.

(2) Samples required in (1) must be collected and analyzed ~~according to the requirements~~ at the frequency for regulated inorganic chemicals, other than nitrate and nitrite, as required in ~~section 4.1(E)(2)~~ (3) ~~of department Circular PWS-1 (1998 edition):~~ below.

~~(2)~~ The department may waive the sampling and analysis requirement for any or all of these ~~contaminants~~ chemicals if the results of at least one sample demonstrate~~s~~ that further sampling is unnecessary.

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

(a) 40 CFR 141.23, which sets forth sampling and analytical method requirements for inorganic chemicals;

(b) 40 CFR 141.24, which sets forth sampling and analytical method requirements for organic chemicals other than total trihalomethanes;

(c) 40 CFR 141.25, which sets forth analytical method requirements for radioactive contaminants;

(d) 40 CFR 141.26, which sets forth sampling requirements for radioactive contaminants in community water systems;

(e) CFR 141.27, which sets forth requirements for alternate analytical methods;

(f) 40 CFR 141.28, which sets forth requirements for the use of certified laboratories by public water system suppliers and by the department. References in 40 CFR 141.28 to 40 CFR 141.21 also refer to ARM 17.38.215;

(g) 40 CFR 141.28, which sets forth sampling requirements for consecutive public water systems;

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

(i) 40 CFR 141.40, which sets forth special sampling and analytical method requirements for unregulated inorganic and organic contaminants;

(j) 40 CFR 141.41, which sets forth special monitoring and analytical method requirements for sodium;

(k) 40 CFR 141.42, which sets forth special requirements for water system materials subject to corrosion;

(l) 40 CFR 141.80, which sets forth general requirements for the control of lead and copper;

(m) 40 CFR 141.86, which sets forth sampling and analytical method requirements for lead and copper;

(n) 40 CFR 141.87, which sets forth sampling requirements for water quality parameters;

(o) 40 CFR 141.88, which sets forth sampling requirements for lead and copper in source water;

(p) 40 CFR 141.89, which sets forth analytical method requirements for lead, copper and water quality parameters;

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

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

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

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

~~(3)(a) A supplier shall sample and monitor its system for the following inorganic chemicals~~

~~(i) the chemicals listed in ARM 17.38.203(1), Table I, as applicable, under intervals and methods specified in department Circular PWS-1 (1998 edition)~~

~~(ii) lead and copper, as applicable and under intervals and methods specified in department Circular PWS-4 (1998 edition); and~~

~~(iii) other water quality parameters as stated in and under intervals and frequencies specified in department Circular PWS-4 (1998 edition).~~

~~(b) A supplier for a community or non-transient non-community water system must monitor its system for synthetic organic chemicals listed in ARM 17.38.204(1), volatile organic chemicals listed in ARM 17.38.204(3), and certain unregulated organic chemicals specified in department Circular PWS-1 (1998 edition).~~

~~(c) A community water or non-transient non-community water system that either uses unfiltered surface water or unfiltered ground water under the direct influence of surface water or serves a population of 10,000 or more individuals must be monitored by the supplier for total trihalomethanes if the system adds a disinfectant to the water supply. The department may waive this requirement for a public water supplier that uses surface water and does not practice filtration, if the supplier is in compliance with a department administrative order, court order, or court-ordered consent decree to provide filtration and~~

~~if the supplier agrees to comply with an alternative monitoring plan acceptable to the department.~~

~~(i) The analysis for total trihalomethanes must be performed at quarterly intervals on at least 4 samples for each treatment plant used by the system. At least 25% of the samples must be taken at locations reflecting the maximum residence time of the water in the distribution system. The remaining samples must be taken at representative locations taking into account the number of persons served, the different sources of water and the treatment methods employed.~~

~~(ii) The monitoring frequency may be reduced by the department to a minimum of 1 sample per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system. This reduction in monitoring may be granted only if the data from at least 1 year of monitoring demonstrates that total trihalomethane concentrations will be consistently below 50% of the maximum contaminant level. After 1 full year of quarterly monitoring in which all sample results are less than 50% of the maximum contaminant level, systems serving fewer than 3300 persons may reduce their monitoring to once per year provided the sample is collected during the time of year and from a location most conducive for total trihalomethane formation.~~

~~(4) Water as served to the consumer from community water systems must be analyzed initially by June 24, 1980, and every 4 years thereafter for radiological content by analyzing 4 consecutive quarterly samples or a composite of 4 consecutive quarterly samples for gross alpha and radium-226 and radium-228.~~

~~(a) A gross alpha particle activity measurement may be substituted for the required radium-226 and radium-228 analyses provided that the measured gross alpha particle activity does not exceed 5 pCi/l.~~

~~(b) When the gross alpha particle activity exceeds 5 pCi/l, the same or an equivalent sample must be analyzed for radium-226. If the concentration of radium-226 exceeds 3~~

~~pCi/l, the same or an equivalent sample must be analyzed for radium-228.~~

~~(c) When the results of tests done in conformance with (a) and (b) above have established that the concentration is less than half the maximum contaminant levels, analysis of a single annual sample may be substituted for the quarterly sampling procedure.~~

~~(5) Analysis for man-made beta and photon emitters must be required for community systems using surface water sources and serving more than 100,000 persons and such other water systems as required by the department.~~

(6) 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.

~~(7)~~(4) A supplier shall sample Eevery new source of water supply, both surface and ground, must be analyzed for nitrate and nitrite analyses to demonstrate compliance with this subchapter before the water is served to the public. Unless otherwise directed by the department, a supplier also shall sample all new sources of water supply must also be analyzed for analysis of the following parameters identified in (3) above before the end of the calendar quarter in which the source is connected to a public water supply:. A supplier shall also sample and analyze a new source serving a transient non-community water system for

~~(a) radiological content, for community water systems;~~

~~(b) chemical content, in accordance with department Circular PWS-1 (1998 edition), for community and non-transient non-community water systems; and~~

~~(c)~~ either total dissolved solids (TDS) or specific conductance~~, in accordance with department Circular WQB-3 (1998 edition), for transient non-community water systems~~.

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

~~(9) The department hereby adopts and incorporates by reference department Circular PWS-1 (1998 edition), which sets forth standards and monitoring requirements for other volatile organic chemicals, inorganic chemicals, and synthetic organic chemicals, and department Circular PWS-4 (1998 edition), which sets forth standards and monitoring requirements for lead and copper. A copy of each may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

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

17.38.217 SAMPLING AND REPORTING RESPONSIBILITY (1) The supplier of a public water supply system is responsible for the proper collection ~~and submission~~ of samples required in this subchapter for microbiological, inorganic, organic, and radiological analysis and submission of the samples to an

~~licensed~~ approved laboratory~~,~~ or to the state laboratory at the times designated by the department. The supplier is also responsible for performing the control tests required in this sub-chapter. Department personnel, where their programs allow, may assist in the collection, submission and analysis of the samples. Suppliers are also responsible for reporting the results of these samples and control tests in accordance with the requirements of this subchapter. A supplier shall use reporting formats specified by the department for any reporting required in this subchapter.

~~(2) Suppliers of public water supply systems must collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. These plans must be submitted to the department and are subject to department review and revision.~~

~~(3) A supplier of a public water supply system that has exceeded the microbiological contaminant MCLs specified in ARM 17.38.207 must report the violation to the department no later than the end of the next business day after it learns of the violation, and notify the public in accordance with department Circular PWS-2 (1998 edition).~~

~~(4) A supplier of a public water supply system that has failed to comply with a total coliform bacterial monitoring requirement, including the sanitary survey requirement stated in ARM 17.38.231, must report the monitoring violation to the department within 10 days after the supplier discovers the violation, and notify the public in accordance with department Circular PWS-2 (1998 edition).~~

~~(5) A supplier of a community water system must notify the public as specified in department Circular PWS-2 (1998 edition) when the fluoride level exceeds 2.0 milligrams per liter (mg/l).~~

~~(6) A supplier of a public water supply system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, shall report that occurrence to the department as soon as possible, but no later than by the end of the next business day.~~

~~(7)(a) For any of the systems listed below, the system supplier upon learning of a turbidity measurement for water entering the distribution system that exceeds 5.0 NTU shall inform the department of the exceedance as soon as possible and no later than the end of the next business day:~~

~~(i) a system that uses unfiltered surface water;~~

~~(ii) a system that uses unfiltered ground water under the direct influence of surface water; or~~

~~(iii) a system employing slow sand filtration, diatomaceous earth filtration, or other approved filtration technology.~~

~~(b) A system supplier employing conventional filtration treatment or direct filtration upon learning of a turbidity measurement for water entering the distribution system that exceeds 1.0 NTU shall notify the department as soon as possible and no later than the end of the next business day.~~

~~(8) If the disinfectant residual falls below 0.2 mg/l in the water entering the distribution system, in a public water supply using full time disinfection, the system supplier must notify the department as soon as possible, but no later than by the end of the next business day. The supplier of water must also notify the department by the end of the next business day as to whether the residual was restored to at least 0.2 mg/l within 4 hours after discovery that the 0.2 mg/l standard was not being met.~~

~~(9) Unless a shorter period is specified by the department, the supplier shall report to the department the results of any test measurement or analysis required by these rules within the following time periods:~~

~~(a) the first 10 days following the month in which the result is received by the supplier; or~~

~~(b) the first 10 days following the end of the required monitoring period as stipulated by the department.~~

~~(10) Unless a different reporting period is specified in these rules, the supplier of water must report to the department within 48 hours any failure to comply with any drinking water regulation (including failure to comply with monitoring requirements) set forth in these rules.~~

~~(11) A supplier of water, within 10 days of completion of each public notification required pursuant to these rules and department Circular PWS-2 (1998 edition), shall submit to the department a representative copy of each type of notice distributed, published, posted, or made available to the persons served by the system or to the media.~~

~~(12) Upon request by the department, a supplier of water shall timely submit to the department copies of any records required to be maintained by these rules.~~

~~(13) The department hereby adopts and incorporates by reference department Circular PWS-2 (1998 edition), which sets forth public notification requirements for suppliers. A copy may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.~~

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

17.38.225 CONTROL TESTS~~--GENERAL~~ (1) ~~A control test permits the supplier of the system to~~ To determine compliance with treatment requirements of this subchapter, to judge variations in water quality, to identify objectionable water characteristics, and to detect the presence of foreign substances which may adversely affect the ~~potability~~ quality of the water~~.~~, ~~A~~ control tests must be performed, recorded and reported by water suppliers in accordance with procedures and reporting formats approved by the department.

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

(a) by a supplier of a public water supply system employing full time chlorination of a groundwater source~~, 1 at~~

~~the point of application and 1 in the distribution system~~. The frequency of chlorine residual monitoring may be reduced by the department for non-community 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.

(3) A test for chlorine residual in the distribution system must be made at selected points consistent with the microbiological sample siting plan specified in ~~ARM 17.38.217(2)~~ 40 CFR 141.21 and changed regularly so as to cover the system completely at least each week.

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

(a) ~~Turbidity--Method 214A (Nephelometric Method Nephelometric Turbidity Units), pages 134-136,~~ Turbidity measurements must be taken as set forth in ~~Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al. (16th edition).~~ 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 standard ~~on no less than a~~ at least quarterly ~~basis~~. 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 days following the end of the month during which this procedure took place.

(b) ~~Residual disinfectant concentration--~~Residual disinfectant concentrations ~~for free chlorine and combined chlorine (chloramines)~~ must be measured ~~by Method 408C (Amperometric Titration Method), pages 303-306, Method 408D (DPD Ferrous Titrimetric Method), pages 306-309, Method 408E (DPD Colorimetric Method), pages 309-310, or Method 408F (Leuco Crystal Violet Method), pages 310-313,~~ as set forth in ~~Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association et al. (16th edition).~~ 40 CFR 141.74. Residual disinfectant concentrations for free chlorine and combined chlorine may also be measured by using DPD colorimetric test kits if approved by the department. ~~Residual disinfectant concentrations for ozone must be measured by the indigo method as set forth in Bader, H., Hoigne, J., "Determination of Ozone in Water by the Indigo Method; A Submitted Standard Method";Ozone Science and Engineering, Vol. 4, pages 169-176, Pergamon Press Ltd. (1982), or automated methods which are calibrated in reference to the results obtained by the indigo method on a regular basis, if approved by the department. (Note: This method will be published in the 17th edition of Standard Methods for the Examination of Water and Wastewater, American Public Health Association et al.; the iodometric method in the 16th edition may not be used.) Residual disinfectant concentrations~~

~~for chlorine dioxide must be measured by Method 410B (amperometric method) or Method 410C (DPD Method), pages 323-324, as set forth in Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association et al. (16th edition.)~~

(c) ~~Temperature--Method 212 (Temperature), pages 126-127,~~ Temperature measurements must be taken as set forth in ~~Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association et al. (16th edition).~~ 40 CFR 141.23(k)(1).

(d) ~~pH--Method 423 (pH Value), pages 429-437,~~ Measurements for pH must be taken as set forth in ~~Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association (16th edition.)~~ 40 CFR 141.23(k)(1).

(5) Measurements for pH, temperature, turbidity, and residual disinfectant concentrations for ~~a~~ community and non-transient non-community water supply systems must be conducted by a ~~party~~ person certified under the provisions of Title 37, chapter 42, MCA, or by a person who has been properly trained to conduct these measurements by the operator in responsible charge or by the department. Bacteriological samples for ~~a~~ community and non-transient non-community water supply systems must be collected by a person approved by the department or certified under the provisions of Title 37, chapter 42, MCA. Measurements for total coliform bacteria, fecal coliform bacteria, and heterotrophic plate count must be conducted by an approved laboratory.

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

(a) ~~Method 214A (Nephelometric Method-Nephelometric Turbidity Units), pages 134-136, Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al. (16th edition), which sets forth methods for determining turbidity.~~ 40 CFR 141.22, which sets forth turbidity sampling and analytical requirements, except for the second and third sentences in 141.22(a).

(b) ~~Method 408C (Amperometric Titration Method), pages 303-306, Method 408D (DPD Ferrous Titrimetric Method), pages 306-309, Method 408E (DPD Colorimetric Method), pages 309-310, and Method 408F (Leuco Crystal Violet Method), pages 310-313, Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association et al. (16th edition), which set forth methods for determining residual disinfection.~~ 40 CFR 141.74, which sets forth analytical and monitoring requirements, except for the following changes:

(i) "1 NTU" means 1.0 nephelometric turbidity unit for the purposes of this subchapter;

(ii) The first sentence in 40 CFR 141.74(b)(4)(i)(B)(ii) is replaced with the following: "If the system uses more than one point of disinfectant application before or at the first customer, the system must determine the CT value of each disinfection sequence immediately prior to the next point of disinfectant application during peak hourly flow, except that

contact time achieved prior to filtration is not included in this calculation.";

(iii) The following phrase is inserted after the phrase "system's filtered water" in the first sentence in 40 CFR 141.74(c)(1): "and individual filter effluent";

(iv) The last sentence in 40 CFR 141.74(c)(1) is not adopted; and

(v) 40 CFR 141.74(b)(5) and 141.74(c)(2) are modified to read: "The residual disinfectant concentration of the water entering the distribution system must be monitored continuously, and the lowest value must be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every 4 hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment."

(c) ~~Bader, H., Hoigne, J., "Determination of Ozone in Water by the Indigo Method; A Submitted Standard Method"; Ozone Science and Engineering, Vol. 4, pages 169-176, Pergamon Press Ltd. (1982), which sets forth methods for determining residual ozone concentration in water;~~ 40 CFR 141.172, which sets forth disinfection profiling and benchmarking requirements;

(d) ~~Method 410B (Amperometric Method), pages 322-323, or Method 410C (DPD Method), pages 323-324, Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association et al. (16th edition), which sets forth methods for determining residual chlorine dioxide;~~ 40 CFR 141.174, which sets forth filtration sampling requirements; and

~~(e) Method 212 (Temperature), pages 126-127, Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association et al. (16th edition), which sets forth a method for determining residual temperature in water;~~

~~(f) Method 423, pages 429-437, Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association (16th edition), which sets forth a method for determining pH;~~

(g) remains the same but is renumbered (e).

~~(h)~~(7) Copies of Title 37, chapter 42, MCA, ~~the documents described in (a)-(g) above~~ may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

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

17.38.234 TESTING AND SAMPLING RECORDS AND REPORTING REQUIREMENTS (1) In order to To ensure the safety of water delivered to the consumers, it is essential that there be a record of laboratory examinations of the water sufficient to show it is safe with respect to both bacteriological quality and other maximum contaminant levels. suppliers of water shall maintain accurate and complete testing records at all water

plants and for all water systems. Complete records must be made available to the department upon request.

(2) ~~Unless specified otherwise in these rules, the records of all laboratory checks and control tests must be kept on file for a period of 10 years by the supplier of water and must be readily available for inspection by the department or its authorized representative.~~ A supplier shall keep a daily record of the samples and control tests required in ARM 17.38.225, 17.38.227, 17.38.230 and 17.38.234(4). The records must be kept on report forms approved by the department and must be prepared in duplicate. Unless indicated otherwise in these rules, the original records must be forwarded to the department by the tenth day of the month following testing.

(3) Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided the following information is included:

(a) the date, place and time of sampling;

(b) the name of the person who collected the sample;

(c) identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample, or other special purpose sample;

(d) date of analysis;

(e) laboratory and person responsible for performing analysis;

(f) the analytical technique/method used, analysis number; and

(g) the results of the analysis.

(4) A supplier of a public water supply system that has exceeded the microbiological contaminant MCLs specified in ARM 17.38.207 shall report the violation to the department by the end of the next business day after learning of the violation.

(5) A supplier utilizing a water treatment plant employing coagulation, settling, softening, or filtration shall keep a daily record of the operations performed in the treatment process together with measured flows, phenolphthalein (p) alkalinity, total alkalinity, hardness (where softening is utilized), chemical doses, observations, and costs related to the operation of the plant.

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

(a) 40 CFR 141.31, which sets forth general reporting requirements for public water supplies;

(b) 40 CFR 141.33, which sets forth general record keeping requirements for public water supplies;

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

(d) 40 CFR 141.75, which sets forth reporting requirements for public water supplies that use surface water sources, except for the following changes:

(i) "5 NTU" means 5.0 nephelometric turbidity units for the purposes of this subchapter; and

(ii) "not detected" with respect to residual chlorine concentration means less than 0.20 by the DPD method, or 0.10 by the amperometric titration method for the purposes of this

subchapter.

(e) 40 CFR 141.90, which sets forth reporting requirements for lead and copper;

(f) 40 CFR 141.134, which, in addition to 40 CFR 141.31, sets forth reporting requirements for disinfection byproducts; and

(g) 40 CFR 141.175, which, in addition to 40 CFR 141.75, sets forth reporting requirements for public water supplies that use surface water sources.

(6) Upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, a supplier shall report that occurrence to the department as soon as possible, but no later than by the end of the next business day.

(7) Upon request by the department, suppliers shall timely submit to the department copies of any records required to be maintained by these rules.

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

17.38.239 PUBLIC NOTIFICATION FOR COMMUNITY AND NON-COMMUNITY SUPPLIES (1) The owner or supplier of a public water supply system shall notify persons served by the system as specified in department Circular PWS-2 (1998 edition) and the department as required under ARM 17.38.217 if the system: The board hereby adopts and incorporates by reference the following public notification requirements:

(a) ~~fails to comply with an applicable MCL, treatment technique, variance or exemption schedule, monitoring requirement, testing procedure;~~ 40 CFR 141.32, which sets forth public notification requirements; and

(b) ~~is granted a variance or exemption; or~~ 40 CFR 141.35(d), which sets forth public notification requirements for unregulated chemicals.

~~(c) incurs any other violation pursuant to these rules.~~

(2) ~~If a maximum contaminant level for a public water supply system is exceeded, the department may require a supplier of water to give additional public notice by newspaper advertisement, press release, or other appropriate means approved by the department. The department may waive this requirement if it determines that the violation has been corrected promptly after discovery, the cause of the violation has been eliminated, and there is no longer a risk to public health.~~ The board hereby adopts and incorporates by reference 40 CFR Part 141, Subpart O, which sets forth requirements for consumer confidence reports.

~~(3) If an imminent threat to public health occurs, the department may require any measure necessary to protect public health.~~

~~(4) The department hereby adopts and incorporates by reference department Circular PWS-2 (1998 edition), which sets forth public notification requirements for public water supply~~

~~system suppliers. A copy may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

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

17.38.244 VARIANCES AND EXEMPTIONS ~~FROM MAXIMUM CONTAMINANT LEVELS (MCL'S) FOR ORGANIC AND INORGANIC CHEMICALS AND FROM TREATMENT REQUIREMENTS FOR LEAD AND COPPER~~ ~~(1) The EPA has identified the technologies listed in sections 6.1 and 6.2 of department Circular PWS-1 (1998 edition) as the best available technology (BAT), treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for inorganic chemicals listed in ARM 17.38.203 and for synthetic and volatile organic chemicals listed in ARM 17.38.204(1) and (3).~~

~~(2) Suppliers of community water systems and non-transient, non-community water systems must install or use any treatment method identified in department Circular PWS-1 (1998 edition) as a condition for receiving a variance, except as provided in (3) of this rule. If the system cannot meet the MCL after installation of the treatment method, that system is eligible for a variance.~~

~~(3) The department may grant a variance from ARM 17.38.203 or 17.38.204 subject to the requirements of (4) through (8) of this rule.~~

~~(4) If a supplier can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treatment methods identified in (1) of this rule would only achieve a de minimis reduction in contaminants, the department may issue a schedule of compliance that requires the system being granted the variance to examine other treatment methods as a condition of obtaining the variance.~~

~~(5) If the department determines that a treatment method identified in (1) of this rule is technically feasible, the department may require the system to install and/or use that treatment method in connection with a compliance schedule. The department's determination must be based upon studies by the system supplier and other relevant information.~~

~~(6) To avoid an unreasonable risk to health, the department may require a public water supply system supplier to use:~~

~~(a) bottled water, point-of-use devices, or other means as a condition of granting a variance or an exemption from the requirements of section 3.0, department Circular PWS-1 (1998 edition);~~

~~(b) bottled water and point-of-use devices or other means, but not point-of-entry devices, as a condition for granting an exemption or variance from corrosion control treatment requirements for lead and copper in sections 5.1 and 5.2 of department Circular PWS-4 (1998 edition); or~~

~~(c) point-of-entry devices as a condition for granting an exemption or variance from the source water and lead service line replacement requirements for lead and copper under sections 5.3 or 5.4 of department Circular PWS-4 (1998 edition).~~

~~(7) Public water supply systems that use bottled water as a condition for receiving a variance or an exemption from the requirements of section 3.0 of department Circular PWS-1 (1998 edition) or an exemption from the requirements of section 5.0 of department Circular PWS-4 (1998 edition), must meet the following requirements:~~

~~(a) The supplier of water shall submit and obtain department approval of a monitoring program for bottled water. The monitoring program must provide reasonable assurance that the bottled water meets all MCLs. The supplier must monitor a representative sample of bottled water for all contaminants regulated under department Circular PWS-1 (1998 edition), during the first quarter it supplies the bottled water to the public and annually thereafter. Results of the monitoring program must be provided to the department within 30 days after the end of the first quarter and thereafter within 30 days after the end of a 12-month period.~~

~~(b) The supplier of water must receive a letter of certification from the bottled water company that:~~

~~(i) the bottled water supplied has been taken from an "approved source" as defined in 21 CFR 129.3(a);~~

~~(ii) the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g)(1) through (3); and~~

~~(iii) the bottled water does not exceed any MCLs or quality limits as set out in 21 CFR 103.35, 110 and 129.~~

~~(c) The supplier of water shall provide the certification to the department within 30 days after the end of the first quarter after it supplies bottled water and thereafter within 30 days after the end of a 12-month period.~~

~~(d) The supplier of water is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water supply system, via door-to-door bottled water delivery.~~

~~(8) Public water supply systems that use point-of-use devices as a condition for obtaining a variance or an exemption from ARM 17.38.204 for volatile organic compounds must meet the following requirements:~~

~~(a) It is the responsibility of the supplier of water to operate and maintain the point-of-use treatment system.~~

~~(b) The supplier of water must develop an operations and monitoring plan and obtain department approval for the plan before point-of-use devices are installed. The operations and monitoring plan must provide for:~~

~~(i) proper application of effective technology; and~~

~~(ii) health protection equivalent to an operations and monitoring plan for central water treatment.~~

~~(c) The supplier of water must ensure that the microbiological safety of the water is maintained.~~

~~(d) The supplier of water must certify the system for performance, undertake field testing and, if not included in the certification process, commit to a rigorous engineering design review of the point-of-use devices to ensure the technology used is effective.~~

~~(e) The design and application of the point-of-use devices must account for the tendency for increase in heterotrophic bacteria concentrations in water treated with activated carbon. Frequent backwashing, post-contactor disinfection, and heterotrophic plate count monitoring may be necessary to ensure that the microbiological safety of the water is not compromised.~~

~~(f) All consumers must be protected. Every building connected to the public water supply system must have a point-of-use device installed, maintained and adequately monitored. The rights and responsibilities of the public water supply system customer must convey with title upon sale of property.~~

~~(g) In requiring use of a point-of-entry device as a condition for granting an exemption or variance from the treatment requirements for lead and copper under sections 5.3 or 5.4 of department Circular PWS-4 (1998 edition), the supplier must demonstrate to the department's satisfaction that use of the device will not cause increased corrosion of lead and copper bearing materials located between the device and the tap that could increase contaminant levels at the tap.~~

~~(9) The department hereby adopts and incorporates by reference department Circular PWS-1 (1998 edition), which sets forth standards and other requirements for volatile organic chemicals, other organic chemicals, and inorganic chemicals; and department Circular PWS-4 (1998 edition), which sets forth standards and monitoring requirements for lead and copper. A copy of each may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.~~

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

(a) 40 CFR 141.4(a), which sets forth general requirements for variances and exemptions;

(b) 40 CFR 142.20, which sets forth requirements for variances and exemptions under the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq. (SDWA);

(c) 40 CFR 142.21, which sets forth requirements for state review of variance and exemption requests;

(d) 40 CFR Part 142, Subpart E, which sets forth requirements for variances, except that the department has the same authority as the EPA administrator has in a state that does not have primary enforcement responsibility for enforcement of the SDWA;

(e) 40 CFR Part 142, Subpart F, which sets forth requirements for the issuance of exemptions, except that the department has the same authority as the EPA administrator has

in a state that does not have primary enforcement responsibility for enforcement of the SDWA;

(f) 40 CFR Part 142, Subpart G, which sets forth the identification of best technologies, treatment techniques, or other means generally available; and

(g) 40 CFR Part 142, Subpart K, which sets forth the requirements for variances for small public water supply systems.

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

17.38.248 SERVICE CONNECTION FEES (1) A public water ~~supply system~~ supplier ~~must~~ shall pay to the department an annual fee for each state fiscal year. The annual fee must be postmarked or delivered to the department by March 1 of each year. ~~Payment for fiscal year 1992 must occur no later than March 1, 1992.~~

(2)(a) and (b) remain the same, but are renumbered (2) and (3).

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

(4)~~(c)~~ Each community public water supply system supplier ~~must~~ shall determine the total number of active service connections for each fiscal year based on an assessment that occurs between July 1 and August 1 of that fiscal year.

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

(3) and (4) remain the same, but are renumbered (7) and (8).

(9)~~(5)~~ Failure to pay the annual fee, including any outstanding past-due balance, by March 1 of the fiscal year for which the fee is assessed subjects ~~the system~~ supplier~~s~~ to an additional charge to be calculated by multiplying the total outstanding ~~fee~~ balance by ~~1.50~~ 10% ~~for each calendar month in which the fee is not paid~~.

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

AUTH: 75-6-103, 75-6-108, MCA
IMP: 75-6-104, 75-6-108, MCA

17.38.262 GRANT OF A VARIANCE OR EXEMPTION ~~(1) If the department proposes to grant a variance or exemption, the department shall notify the applicant of its decision in writing. The notice must identify the variance and the facility covered by the variance, and must specify the period of time for which the variance will be effective.~~

~~(a) For a variance "A" or an exemption, the notice must provide also that the variance "A" or exemption will be terminated when the public water supply system comes into compliance with the applicable regulation, and may be terminated upon a finding of the department that the system~~

~~has failed to comply with any requirements of the accompanying compliance schedule.~~

~~(b) For a variance "B" the notice must provide also that the variance may be terminated at any time by the department upon a finding that the nature of the raw water source is such that the specified treatment technique for which the variance was granted is necessary to protect the health of persons or upon a finding that the public water supply system has failed to comply with monitoring and other requirements prescribed by the department as a condition to the granting of the variance.~~

~~(2) Before a variance or an exemption proposed to be granted by the department may take effect, the department shall provide public notice of its proposal to grant such variance or exemption and of an opportunity for public hearing on the proposal.~~

~~(a) Public notice of a proposed variance or exemption must be posted in the principal post office of each municipality or area served by the public water supply system and published in a newspaper of general circulation in the geographical area served by the public water supply system.~~

~~(b) The public notice must contain the following information:~~

~~(i) a summary of the proposed variance or exemption and its accompanying compliance plan;~~

~~(ii) a statement that opportunity is available to any interested person to request a public hearing within 15 days after the date of publication of the public notice; and~~

~~(iii) address and telephone number of the water quality bureau of the department.~~

~~(3) A public hearing on a proposed variance or exemption may be requested by any interested person within 15 days after the date of publication of the public notice provided for in (2) of this rule. Frivolous or insubstantial requests for a public hearing may be denied by the department. A request for a public hearing must include the following information:~~

~~(a) the name, address and telephone number of the person requesting the hearing;~~

~~(b) a brief statement of the interest of the person making the request in the proposed variance or exemption and its accompanying compliance plan;~~

~~(c) a statement describing the information that the requesting person intends to submit at such hearing; and~~

~~(d) the signature of the individual making the request, or, if the request is made on behalf of a corporation, association, partnership, municipality, other political subdivision of the state, or federal agency, the signature of a responsible official of such entity.~~

~~(4) At least 15 days prior to the date scheduled for a public hearing, the department shall give notice in the manner set forth in (2) of this rule of any public hearing to be held pursuant to a request by an interested person which is granted by the department or on the department's own initiation. Notice of the hearing must be sent also to the person~~

~~requesting the hearing, if any. Notice of a public hearing must contain the following information:~~

~~(a) a statement of the purpose of the hearing;~~

~~(b) information regarding the time, date and location of the public hearing; and~~

~~(c) the address and telephone number of the water quality bureau of the department at which a person may obtain further information concerning the hearing.~~

~~(5)~~(1) At a public hearing held pursuant to ~~this rule~~ ARM 17.38.244, a presiding officer shall accept information, comments and data from persons relevant to the terms proposed by the department for a variance or exemption and its accompanying compliance plan. The hearing is not subject to the contested case procedure of the Montana Administrative Procedure Act, and ~~no~~ cross-examination ~~will be~~ is not allowed. The presiding officer has the discretion to limit repetitive testimony.

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

5. The rules proposed for repeal are as follows:

17.38.218 VERIFICATION SAMPLES CONTROL TESTS--SURFACE SUPPLIES (Auth: 75-6-103, MCA; IMP, 75-6-103, MCA), located at page 17-3573, Administrative Rules of Montana.

17.38.226 CONTROL TESTS--SURFACE SUPPLIES (Auth: 75-6-103, MCA; IMP, 75-6-103, MCA), located at page 17-3579, Administrative Rules of Montana.

17.38.235 OPERATING RECORDS (Auth: 75-6-103, MCA; IMP, 75-6-103, MCA), located at page 17-3587, Administrative Rules of Montana.

17.38.255 VARIANCE "A" (Auth: 75-6-103, MCA; IMP, 75-6-103, MCA), located at page 17-3605, Administrative Rules of Montana.

17.38.256 VARIANCE "B" (Auth: 75-6-103, MCA; IMP, 75-6-103, MCA), located at page 17-3605, Administrative Rules of Montana.

17.38.257 EXEMPTIONS (Auth: 75-6-103, MCA; IMP, 75-6-103, MCA), located at page 17-3606, Administrative Rules of Montana.

17.38.258 COMPLIANCE PLAN--GENERAL (Auth: 75-6-103, MCA; IMP, 75-6-103, MCA), located at page 17-3606, Administrative Rules of Montana.

17.38.259 COMPLIANCE PLAN--VARIANCES (Auth: 75-6-103, MCA; IMP, 75-6-103, MCA), located at page 17-3607, Administrative Rules of Montana.

17.38.260 COMPLIANCE PLAN--EXEMPTIONS (Auth: 75-6-103, MCA; IMP, 75-6-103, MCA), located at 17-3607, Administrative Rules of Montana.

17.38.270 ADOPTION AND INCORPORATION BY REFERENCE (Auth: 75-6-103, MCA; IMP, 75-6-103, MCA), located at page 17-3613, Administrative Rules of Montana.

6. The Board is proposing amendments to Administrative Rules of Montana (ARM) Title 17, chapter 38, subchapter 2, that would: (1) update existing rules regarding public water supplies by adopting and incorporating by reference the applicable sections of the July 1, 1999, version of the Code of Federal Regulations (CFR); (2) rewrite the basic public water supply rules by eliminating most of the existing text, which repeats federal requirements, and instead adopt the federal regulations and incorporate them by reference; (3) reorganize the rules into a more logical structure; (4) repeal rules that are no longer necessary because their requirements are now found in the federal regulations being proposed for adoption and incorporation by reference; and (5) change the calculation of the penalty for failure to pay public water supply system service connection fees from a 1.5% per month fee to a onetime flat fee of 10%.

The proposed amendments to update the rules 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.

New federal regulations that the Board is proposing to adopt by reference include the interim enhanced surface water treatment rule, the stage 1 disinfection/disinfection byproducts rule, the consumer confidence report rule, and revisions to the existing variance and exemption rules.

The interim enhanced surface water treatment rule (IESWTR) and the stage 1 disinfection/disinfection byproducts rule (D/DBPR) are important public health protection rules that were mandated by the 1996 amendments to the federal Safe Drinking Water Act (SDWA). Because of their public health significance, Congress exempted these rules from the cost-benefit analysis requirements in the SDWA that apply to other rules. The IESWTR requires public water suppliers using surface water sources to improve filtration treatment in order to reduce risks from waterborne diseases such as giardia and cryptosporidium. The D/DBPR requires public water suppliers that add disinfectants to their water supply to minimize the creation of disinfection byproducts that may cause cancer.

The consumer confidence report rule requires that community public water suppliers inform consumers annually regarding their source of water, the quality of their water, and regulatory compliance. The report is a mechanism that each supplier can use to communicate with its customers regarding these issues and related issues such as plans for

water system improvements and rate increases. The report was required directly by federal regulation in 1999, and through the proposed amendment will become a requirement of Montana rule. More than 93% of Montana's community water suppliers successfully completed their first required annual report last year.

The revisions to the variance and exemption requirements primarily allow for more state flexibility in implementing treatment requirements and in allowing variances and exemptions for systems serving up to 10,000 people.

To simplify the adoption of federal regulations in this notice of proposed rulemaking and in the future, the Board is also proposing to eliminate much of the existing text of the Montana rules and replace it with federal regulations that would be adopted and incorporated into the Montana rules by reference. However, the Board proposes to retain provisions from those existing Board rules that are more stringent than their federal counterparts. Repealing existing rules and adopting federal counterparts by reference will not impose any new requirements upon water suppliers.

The reason for this approach is that the current public water supply rules, found in ARM Title 17, chapter 38, subchapter 2, are lengthy and often repeat the requirements contained in the CFR. Because the federal government requires the Board to add or alter many administrative rules every year for the State of Montana to retain primacy in enforcing drinking water laws, the task of writing rules has grown greatly.

The federal government requires Montana's public water supply rules to be at least as stringent as the federal regulations. Montana law, found in § 75-6-116, MCA, prohibits the Board from adopting rules that are more stringent than the comparable federal regulations unless certain statutory procedures are followed. It would be unduly cumbersome, expensive, and inexpedient for the Board to adopt separate rules for Montana when the federal regulations already cover the area, and the Board is constrained to have requirements that are at least as stringent as the comparable federal regulations.

Adopting existing federal regulations by reference would significantly reduce the volume of the existing rules, simplify the process of adopting new federal requirements, decrease the time it takes to add new requirements to the Board's rules, and save the Board and the Department time and money. Therefore, the Board is proposing to adopt the federal regulations by reference, as is authorized by § 2-4-307, MCA.

The proposed amendments also reorganize the rules into a more logical structure. All requirements of the state and federal rules for treatment, sampling, public notification and process control monitoring have been organized into individual sections of the proposed rule. Currently, these state and federal requirements are scattered throughout ARM Title 17, chapter 38, subchapter 2, and the CFR.

The Board is proposing to delete definitions in ARM 17.38.202 where identical definitions exist in the CFR and are being proposed for adoption by reference in the proposed rules. Other rules being proposed for repeal and replacement with their federal counterparts include rules regarding maximum contaminant levels (MCLs), treatment techniques, best available technologies, total coliform bacteria monitoring, lead and copper monitoring, inorganic and organic chemical monitoring, surface water treatment, and variances and exemptions. The Board is not proposing to change existing requirements for total coliform bacteria monitoring and surface water treatment that are more stringent than their federal counterparts.

The Board is proposing to amend the catchphrases of some rules to make the catchphrases of those rules consistent with the proposed reorganization of the rules. Where the Board is proposing to delete language from a rule catchphrase, the requirements of the rule corresponding to that catchphrase language have been moved to another rule. Where the Board is proposing to add language to a rule catchphrase, that language corresponds with new requirements the Board is proposing to add to that rule.

The Board is also proposing minor editorial amendments to the rules to clarify the rules and make the rules more concise and easier to read. These editorial amendments are not intended to change the meaning of the rules.

A section-by-section explanation of the proposed revisions is set out below, showing each rule number followed by the catchphrase of the rule as it is proposed:

NEW RULE I INCORPORATION BY REFERENCE -- PUBLICATION DATES AND AVAILABILITY OF REFERENCED DOCUMENTS

Proposed NEW RULE I is necessary to facilitate the proposed adoption and incorporation by reference of federal regulations. The new rule would state that, unless expressly provided otherwise, all federal regulations adopted and incorporated by reference, and Montana statutes referred to in the rules, are from the 1999 edition of the CFR and the Montana Code Annotated. The new rule would also state where persons can obtain copies of federal regulations and Montana statutes adopted and incorporated by reference and referred to in the rules. NEW RULE I would make it easier in the future for the Board to update the incorporations by reference to adopt revisions to federal regulations. With NEW RULE I, the Board will be able to periodically revise one rule, rather than several, to update the date of the CFR edition adopted.

17.38.202 DEFINITIONS

The definitions in 40 CFR 141.2 are being proposed for adoption by reference to facilitate adoption by reference of (EPA) public water supply regulations in 40 CFR Parts 141 and 142. State-specific definitions for the terms "person,"

"public water supply system," and "state" are proposed to retain state-specific meanings for these terms.

17.38.203 MAXIMUM INORGANIC CHEMICAL CONTAMINANT LEVELS

The portions of 40 CFR Part 141 that contain MCLs or action levels for inorganic chemicals, including new MCLs for disinfectants, are being proposed for adoption by reference.

17.38.204 MAXIMUM ORGANIC CHEMICAL CONTAMINANT LEVELS

The MCLs in 40 CFR Part 141 for organic chemicals, including new MCLs for disinfection byproducts, are being proposed for adoption by reference.

17.38.205 MAXIMUM TURBIDITY CONTAMINANT LEVELS

The MCLs in 40 CFR Part 141 for turbidity are being proposed for adoption by reference, except that existing state requirements that are more stringent than EPA requirements for turbidity levels and for individual filter monitoring would be retained by amending the EPA regulations with language from the existing Montana rules.

17.28.206 MAXIMUM RADIOLOGICAL CONTAMINANT LEVELS

The MCLs in 40 CFR Part 141 for radiological contaminants are being proposed for adoption by reference.

17.38.207 MAXIMUM MICROBIOLOGICAL CONTAMINANT LEVELS

The MCLs in 40 CFR Part 141 for total coliform bacteria are being proposed for adoption by reference, with one change. A provision of the current state rule makes it a violation of the MCL if any routine sample is total coliform positive (which by itself would not be an MCL violation), and then the system fails to collect the required number of repeat samples. Under the federal regulation, this would not be a violation of the MCL. The existing state provision is retained by amending the EPA regulation, as adopted, to include it.

17.38.208 TREATMENT ~~TECHNIQUES--FILTRATION AND DISINFECTION~~ REQUIREMENTS

Treatment requirements in current EPA regulations and state rules are not consolidated, and locating these requirements can be cumbersome. Therefore, the Board is proposing to consolidate all treatment requirements for all contaminants into this rule. All treatment requirements in 40 CFR Part 141 are being proposed for adoption by reference.

Existing state treatment requirements that are more stringent than federal requirements are retained by amending the incorporated EPA regulations. These requirements are: (1) watershed control requirements to avoid the need for

filtration that are more specific than those contained in 40 CFR 141.71; and (2) minimum disinfectant residual levels for a public water supply distribution system that receives water from a surface water source that are more stringent than the level required in 40 CFR 141.72.

17.38.215 BACTERIOLOGICAL QUALITY SAMPLES

The monitoring requirements for total coliform bacteria in 40 CFR 141.21 are being proposed for adoption by reference, except that the following existing state requirements that are more specific or more stringent than the EPA requirements are retained: (1) Non-transient non-community public water supplies must sample monthly. 40 CFR 141.21 allows non-transient non-community public water suppliers to monitor quarterly, or even annually under certain circumstances. Proposed amendments to ARM 17.38.215(1)(a) would retain the existing state requirement for monthly sampling at non-transient systems; (2) 40 CFR 141.21 allows transient systems to monitor quarterly, or even annually under certain circumstances. Proposed amendments to ARM 17.38.215(1)(c) would retain existing state requirements that allow quarterly sampling only for suppliers who properly operate and maintain their systems, and who can demonstrate at least 24 consecutive months of satisfactory sample results; (3) Specific state requirements for special purpose samples are proposed to be retained in ARM 17.38.215(1)(d); and (4) Specific state requirements for monitoring of new sources for coliform bacteria are proposed to be retained in ARM 17.38.215(2).

17.38.216 CHEMICAL AND RADIOLOGICAL QUALITY SAMPLES

The sampling requirements for all regulated and unregulated inorganic, organic and radiological chemicals are proposed to be consolidated into this rule. Sampling requirements in current EPA regulations and state rules are not currently consolidated, and locating these requirements can be cumbersome. All EPA sampling requirements for these chemicals are proposed for adoption by reference. More stringent requirements for monitoring of unregulated inorganic chemicals would be retained in ARM 17.38.216(1). More specific requirements for monitoring of new sources would be retained in ARM 17.38.216(3). Requirements that provide for additional monitoring when MCL violations occur would be retained in ARM 17.38.216(4).

17.38.217 SAMPLING AND REPORTING RESPONSIBILITY

The only portion of this rule that is proposed to be retained is ARM 17.38.217(1), which states that suppliers are responsible for all sample collection and reporting. The other portions of this rule that relate to reporting requirements, but not specifically to reporting responsibility, have been adopted from the federal regulations

by reference into ARM 17.38.216, ARM 17.38.234 or ARM 17.38.239.

17.38.225 CONTROL TESTS~~--GENERAL~~

Requirements for all control tests, which are self-monitoring tests, are proposed to be incorporated into this rule. The requirements that were in ARM 17.38.226 for control tests for surface water supplies are also proposed to be incorporated into this rule. The portions of 40 CFR Part 141 that relate to approval of methods for these control tests are proposed to be adopted by reference.

An existing state requirement that suppliers must alternate locations for monitoring concentrations of residual chlorine in distribution systems is proposed to be retained in ARM 17.38.225(3).

Existing state requirements for testing by certified operators at community systems would be retained in ARM 17.38.225(5).

Sampling requirements and analytical methods in 40 CFR 141.22 and 141.74 for turbidity and chlorine residual control testing at surface water supplies are proposed to be adopted by reference in ARM 17.38.225(6)(a) and (b). However, the portions of 40 CFR 141.22(a) and 141.74(c)(1) that allow reduced turbidity monitoring are not being proposed for adoption because existing state rules do not allow this. Also, existing state requirements concerning turbidity levels, disinfectant contact time, individual filter monitoring and chlorine residual monitoring at surface water treatment plants that are more stringent than EPA requirements are being proposed to be retained by modification of 40 CFR 141.74.

17.38.234 TESTING ~~AND SAMPLING~~ RECORDS AND REPORTING REQUIREMENTS

Record-keeping and reporting requirements in EPA regulations and state rules are currently not consolidated. All such requirements from ARM 17.38.217 and ARM 17.38.235 are being proposed for consolidation into this rule.

The relevant portions of 40 CFR Part 141 are being proposed for adoption by reference to replace the existing language of this rule, except that 40 CFR 141.75 is proposed to be modified to reflect the more stringent requirements in the existing state rule concerning turbidity levels and disinfectant residual monitoring in distribution systems that receive water from surface water sources.

17.38.239 PUBLIC NOTIFICATION FOR COMMUNITY AND NON-COMMUNITY SUPPLIES

Public notification requirements for violations of the EPA regulations and state rules are not currently consolidated. This rule would consolidate all public notification requirements in one location.

Included in this rule is adoption by reference of new EPA regulations for annual consumer confidence reports for community water suppliers. Annual consumer confidence reports are required to inform customers regarding the water system sources, water quality and the status of compliance with federal and state regulations.

17.38.244 VARIANCE AND EXEMPTIONS ~~FROM MAXIMUM CONTAMINANT LEVELS (MCL'S) FOR ORGANIC AND INORGANIC CHEMICALS AND FROM TREATMENT REQUIREMENTS FOR LEAD AND COPPER~~

EPA requirements for variances and exemptions are proposed for adoption by reference. Variances would be granted to suppliers who have installed best available technology (BAT), but who remain in noncompliance because of failure of the BAT to meet MCLs or other treatment standards. Exemptions would be granted to suppliers who can justify the need for additional time beyond a regulatory deadline to comply with a treatment requirement.

Included in the variance requirements are technologies that suppliers serving 10,000 or fewer people may use to comply with treatment requirements. These technologies are less costly than technologies that suppliers serving more than 10,000 people must use.

17.38.248 SERVICE CONNECTION FEES

The existing penalty for late payment of service connection fees is calculated by multiplying the fee balance by 1.5% every month beyond the deadline. This process results in outstanding fee balances that change monthly. Fee payments sometimes are made for amounts slightly less than the balance because of confusion over the exact penalty amount, resulting in subsequent penalty calculations for very small balances. A flat penalty of 10% is proposed to minimize confusion over the total fee balance, and to reduce staff time in assessing and collecting the proper balance.

For fiscal year 2000, service connection fees were late if they had not been paid by March 1, 2000. ARM 17.38.248(1). Of the 2,013 public water supply systems in Montana, 131 systems (111 transient non-community, 18 community, and 2 non-transient non-community) were in arrears in their fee payments as of June 22, 2000. They owed a total of $8,105 in fees for 2000, $1,779 for 1999, and $454 for 1998. Under the current system, under which they owe a late fee of 1.5% per month, they owe interest of $549 for 2000, $451 for 1999, and $190 for 1998.

The cumulative effect of the proposed changes is not known because the Board cannot predict the payments suppliers will make on fees in arrears and the Board cannot predict nonpayment of future fee assessments.

Under the present rule, if a transient non-community system, which owes a $50 minimum annual fee, were late in paying its fee bill, it would be assessed interest at 1.5% per

month, or $0.75 per month. If it were late a year (12 months), it would therefore owe a late fee of $9.00. If the change is adopted, the same system would owe a one-time late fee of 10%, or $5, regardless of when it paid.

17.38.262 GRANT OF A VARIANCE OR EXEMPTION

The provisions of this rule are being proposed for deletion and replacement by EPA regulations that are being proposed to be adopted by reference. However, subsection (1) is proposed to be retained to clarify hearing procedures and the applicability of the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

Rules proposed for repeal:

17.38.218 VERIFICATION SAMPLES CONTROL TESTS--SURFACE SUPPLIES

The requirements of this rule would be replaced through adoption by reference of EPA requirements from 40 CFR Part 141.

17.38.226 CONTROL TESTS--SURFACE SUPPLIES

Some of the requirements of this rule would be moved to 17.38.225, others would be replaced through adoption by reference of EPA requirements from 40 CFR Part 141.

17.38.235 OPERATING RECORDS

The requirements of this rule would be either moved to 17.38.234, or would be replaced through adoption by reference of EPA requirements from 40 CFR Part 141.

17.38.255 VARIANCE "A"

The requirements of this rule would be replaced through adoption by reference of EPA requirements from 40 CFR Part 142 into ARM 17.38.244.

17.38.256 VARIANCE "B"

The requirements of this rule would be replaced through adoption by reference of EPA requirements from 40 CFR Part 142 into ARM 17.38.244.

17.38.257 EXEMPTIONS

The requirements of this rule would be replaced through adoption by reference of EPA requirements from 40 CFR Part 142 into ARM 17.38.244.

17.38.258 COMPLIANCE PLAN--GENERAL

The requirements of this rule would be replaced through adoption by reference of EPA requirements from 40 CFR Part 142 into ARM 17.38.244.

17.38.259 COMPLIANCE PLAN--VARIANCES

The requirements of this rule would be replaced through adoption by reference of EPA requirements from 40 CFR Part 142 into ARM 17.38.244.

17.38.260 COMPLIANCE PLAN-- EXEMPTIONS

The requirements of this rule would be replaced through adoption by reference of EPA requirements from 40 CFR Part 142 into ARM 17.38.244.

17.39.270 ADOPTION AND INCORPORATION BY REFERENCE

The documents referenced in this rule would be replaced through adoption by reference of EPA requirements from 40 CFR Part 141.

7. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than September 29, 2000. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5 p.m. September 29, 2000.

8. James B. Wheelis, attorney for the Board, has been designated to preside over and conduct the hearing.

9. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA, underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520

E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, or may be made by completing a request form at any rules hearing held by the Board.

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

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State July 17, 2000.

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 17.8.504, 17.8.505 and 17.8.514 pertaining to air quality fees	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On August 16, 2000 at 10:00 a.m. in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a hearing to consider the proposed amendment of the above-captioned rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., August 9, 2000, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The rules as proposed to be amended would read as follows, with stricken matter interlined and new matter underlined:

17.8.504 AIR QUALITY PERMIT APPLICATION FEES

(1) Concurrent with submittal of an air quality permit application, as required in ARM Title 17, chapter 8, subchapter 7 (Permit, Construction and Operation of Air Contaminant Sources), or ARM Title 17, chapter 8, subchapter 8 (Prevention of Significant Deterioration of Air Quality), the applicant shall submit an air quality permit application fee of $500.

(2) A permit application is incomplete until the ~~proper~~ application fee is paid to the department. ~~If a fee submitted with an air quality permit application is insufficient, the department shall notify the applicant in writing of the appropriate fee that must be submitted for the application to be processed under ARM 17.8.720(2). If the fee assessment is appealed to the board pursuant to ARM 17.8.511, and if the fee deficiency is not corrected by the applicant, the permit application is incomplete until issuance of the board's decision or until completion of any judicial review of the board's decision. Upon final disposition of an appeal, any portion of the fee due to the department or the applicant must be paid immediately.~~

(3) remains the same.

~~(4) The air quality permit application fee is:~~

~~(a) $500.00 for applicants subject to only ARM Title 17, chapter 8, subchapter 7, at the time of application; or~~

~~(b) $1,500.00 for applicants subject to ARM Title 17, chapter 8, subchapters 8, 9 or 10, at the time of application.~~

AUTH: 75-2-111, 75-2-220, MCA
IMP: 75-2-211, 75-2-220, MCA

17.8.505 AIR QUALITY OPERATION FEES

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

(c) If an owner or operator assessed an air quality operation fee fails to pay the required fee (or any required portion of an appealed fee) within ~~90~~ 60 days after the ~~due date of the fee~~ billing date, the department may impose a~~n additional assessment~~ late payment charge of ~~15%~~ 10% of the fee (or any required portion of an appealed fee) ~~or $100, whichever is greater~~, plus interest on the fee (or any required portion of an appealed fee) computed at the interest rate established under ~~15-31-510(3)~~ 75-2-220(5)(a)(i), MCA.

(5) The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and is an administrative fee of $400~~.00~~, plus ~~$20.86~~ $21.12 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted.

(6) through (9) remain the same.

AUTH: 75-2-111, 75-2-220, MCA
IMP: 75-2-211, 75-2-220, MCA

17.8.514 AIR QUALITY OPEN BURNING FEES

(1) through (3) remain the same.

(4)(a) The major open burning air quality permit application fee shall be based on the actual or estimated actual amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality open burning permit for major open burning sources, as required under ARM 17.8.610 (Major Open Burning Source Restrictions). The fee shall be the greater of the following, as adjusted by any amount determined pursuant to (b), below:

(i) a fee calculated using the following formula:

tons of total particulate emitted in the previous appropriate calendar year,
multiplied by ~~$11.25~~ $13.62; plus
tons of oxides of nitrogen emitted in the previous appropriate calendar year,
multiplied by ~~$2.81~~ $3.40; plus
tons of volatile organic compounds emitted in the previous appropriate calendar year,
multiplied by ~~$2.81~~ $3.40; or

(ii) and (b) remain the same.

AUTH: 75-2-111, MCA
IMP: 75-2-211, 75-2-220, MCA

4. Pursuant to Section 75-2-220, MCA, the Department of Environmental Quality assesses air quality preconstruction permit application fees and annual air quality operation fees. These fees must be sufficient to cover the Department's costs of developing and administering the permitting requirements of Title 75, chapter 2, MCA, the Clean Air Act of Montana. The structure and amount of the fees is to be determined by the Board of Environmental Review, and ARM 17.8.510 requires that the Board annually review air quality fees. The amount of money the Department needs to generate through fees depends on the legislative appropriation and the amount of carryover available from the previous fiscal year.

Air quality permit application fees are assessed to all facilities that apply for an air quality preconstruction permit pursuant to ARM Title 17, chapter 8, subchapters 7, 8, 9 or 10. Presently, the permit application fees specified in ARM 17.8.504 are $500 for permit applicants subject to minor new source review and $1,500 for permit applicants subject to the major source Prevention of Significant Deterioration of Air Quality (PSD) permitting requirements. These fees represent the Department's minimum costs related to reviewing the two types of permit applications. PSD sources are large emission sources, which, generally, have the potential to emit 250 tons per year or more of a regulated pollutant.

It is difficult for the Department to determine upon receipt of a permit application whether a particular source should be classified as a PSD source. Section 75-2-211(8), MCA, specifies that an application for an air quality permit is not considered filed until the applicant has submitted all required fees. Therefore, the Department cannot process a permit application until the Department determines whether the applicant has submitted the required fee. For many sources, it is difficult for the Department to make this determination without beginning to process the application. To avoid unnecessarily delaying processing of air quality permit applications, the Board is proposing to amend ARM 17.8.504 to require a $500 application fee for all air quality preconstruction permits. Currently, the Department receives few PSD applications, so a flat $500 application fee would cover most of the Department's costs in reviewing preconstruction permit applications, and the proposed revision would not have a significant impact on total air quality fee collections. In 1999, the Department received only two PSD applications.

The Department estimates that, under the proposed revised permit application fee, 60 permit applicants would pay a total of $30,000 in fees for calendar year 2000. This represents the same number of permit applicants as in 1999 and a decrease in fees of $1,000 from 1999.

The Board is proposing to delete the portions of ARM 17.8.504(2) that relate to calculation of air quality preconstruction permit application fees and appeals of permit fee assessments. The language proposed to be deleted would be

unnecessary with the proposed flat $500 fee for all permit applications.

Under Section 75-2-220, MCA, annual air quality operation fees are required for all facilities that hold an air quality permit, or that will be required to obtain an air quality permit pursuant to § 7661a of the federal Clean Air Act, the Title V air quality operating permit program. Under ARM 17.8.505, the present annual air quality operation fee includes both a flat administrative charge of $400 and a uniform charge of $20.86 per ton of particulate matter of 10 microns or less (PM-10), sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds (VOCs). The Board is proposing to increase the per ton charge from $20.86 to $21.12.

In some years, the emission component of the operation fee needs to be adjusted to compensate for changes in the total amount of pollutants emitted in the state. The Department has calculated the amount of fee fund carryover from fiscal year 2000, and has calculated the total actual emissions from all regulated facilities in 1999. With the projected carryover funds, and the proposed $500 air quality application fee, the proposed increase in the annual air quality operation fee is necessary to generate sufficient fees to satisfy the legislative appropriation and adequately fund the Department's air quality permit program.

The Department estimates that 407 sources of air contaminants would pay a total of $2,044,173 in annual air quality operation fees for calendar year 2000. This represents 33 more sources than in 1999 and a decrease in annual operation fees of $84,302 from 1999.

The Board is proposing to amend the late payment charge provisions of ARM 17.8.505(4)(c). The Board is proposing to revise the time after which a facility incurs a late payment charge from 90 days after the due date of the fee to 60 days after the billing date. This revision, which would shorten the time before the Department can assess a late payment charge, is necessary because the Department relies upon timely payment of annual operation fees to fund the air quality program, and 90 days from the due date is too long for the Department to carry overdue operating fees and still adequately fund the program.

The Board is proposing to amend ARM 17.8.505(4)(c) to decrease the late payment charge from 15% of the operation fee to 10%. Section 75-2-220(5)(a), MCA, specifies that the Department may impose a late payment penalty of up to 50% of the fee, plus interest on the fee. The Board is proposing to decrease the late payment charge to 10% because, with the ability to also assess interest, a late payment charge over 10% is unnecessary to compensate the Department for its expenses in recovering late fees. Any amount less than 10% would not provide an adequate deterrent for late payment.

This year, 13 facilities submitted their annual operation fee more than 90 days after the due date. At the present rate of 15% of the operation fee, the total late payment charge

incurred was $1,036.55. Under the proposed decrease of the late payment charge from 15% to 10%, the total late payment charge incurred this year would have been $691.07, or a decrease of $345.48.

The Board is proposing to delete the $100 minimum late payment charge from ARM 17.8.505(4)(c). Facilities that would be subject to the minimum late payment charge are small facilities with relatively low annual fees. A minimum late payment charge is unnecessary for late payment of relatively low operation fees. The proposed 10% late payment charge, and the existing provision for assessing interest, are sufficient deterrents to late payment and would adequately compensate the Department for its expenses in recovering late fees.

Of the 13 facilities that submitted their annual operation fee more than 90 days after the due date this year, 11 were relatively small facilities that were subject to the $100 minimum late payment charge, and the Department could have assessed a total late payment charge of $1,100 for those 11 facilities. With the proposed deletion of the minimum late payment charge, and with the proposed decrease of the late payment charge from 15% of the operation fee to 10%, those 11 facilities would have incurred a total late payment charge of $452, for a total decrease of $648.

The Board is proposing to amend ARM 17.8.505(4)(c) to specify that interest on a late operation fee is computed at the interest rate established under Section 75-2-220(5)(a)(i), MCA, rather than Section 15-31-510(3), MCA, as specified in the present rule. Section 75-2-220(5)(a), MCA, previously incorporated the interest rate computed under Section 15-31-510, MCA. The 1999 Montana Legislature amended Section 75-2-220(5)(a), MCA, to incorporate the interest rate computed under Section 15-1-216, MCA, and the proposed rule revision is necessary to make the rule consistent with the legislative amendment.

Pursuant to Section 75-2-220, MCA, the Department also assesses fees for major open burning permit applications. In conjunction with the Montana Airshed Group, the Department operates a Smoke Management Program for major open burning. The program establishes burning time restrictions based upon weather conditions, and compliance with the program is the required control mechanism for open burning during the fall burning season. Each year, the Department develops a budget for the program in consultation with the Airshed Group, which includes state and federal land management agencies and private timber companies. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to a major open burning permit. The current fee is the greater of $11.25 per ton of total particulate, plus $2.81 per ton of nitrogen oxide, and $2.81 per ton of VOCs, or a minimum fee of $250. The Board is proposing to increase the per ton fees for calendar year 2000 to $13.62, $3.40 and $3.40, respectively.

This increase is necessary to operate the Smoke Management Program for the upcoming fall burning season.

The Board has not increased the fee for open burning permit applications since 1998. The proposed fee increase is necessary to meet the increase in Smoke Management Program personnel and equipment costs that have occurred due to inflation since 1998.

For the proposed major open burning permit application fees, it is estimated that 14 major open burners would pay a total of $40,810.97 in fees for calendar year 2000. This represents two fewer major open burners than in 1998, the date of the last fee revision, and a budget increase of $5,213.41 from the budget for each of the last two years. The decrease in major open burners since 1998 represents two relatively small facilities that did not conduct major open burning last year and that are not expected to apply for major open burning permits this year. Because these burners were relatively small sources of air contaminants, this decrease is not expected to decrease the costs of the Smoke Management Program.

5. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than August 24, 2000. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5 p.m. August 24, 2000.

6. James B. Wheelis, attorney for the Board, has been designated to preside over and conduct the hearing.

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

completing a request form at any rules hearing held by the Board.

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

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State July 17, 2000.

**BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA**

In the matter of the proposed amendment of ARM 24.11.101, 24.11.201, 24.11.442, 24.11.443, 24.11.457, 24.11.458, 24.11.463, 24.11.464, 24.11.466, 24.11.467, 24.11.475 and 24.11.616, the proposed adoption of nine new rules and the proposed repeal of ARM 24.11.102, 24.11.202, 24.11.450, 24.11.452, 24.11.453, 24.11.454 and 24.11.465, all relating to unemployment insurance matters)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 12 EXISTING RULES, THE PROPOSED ADOPTION OF 9 NEW RULES AND THE PROPOSED REPEAL OF 7 RULES

TO: All Concerned Persons

1. On August 22, 2000, at 10:00 a.m. a public hearing will be held at the first floor auditorium of the Scott Hart building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of 12 existing rules, the adoption of nine new rules and the repeal of seven rules, all related to unemployment insurance matters.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., August 15, 2000, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance Division, Attn: Mr. Roy Mulvaney, P.O. Box 8020, Helena, MT 59604-8020; telephone (406) 444-9036; TTY (406) 444-0532; fax (406) 444-1394; or e-mail rmulvaney@state.mt.us. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Mr. Mulvaney.

3. The Department of Labor and Industry proposes to amend the rules as follows: (new matter underlined, deleted matter stricken)

24.11.101 DIVISION ORGANIZATION--~~BUREAU ADDRESSES~~ LOCATION

(1) The unemployment insurance division of the department of labor and industry adopts and incorporates the organizational structure and description of general duties and responsibilities set out and explained in chapter 1 of this title. The division strives to provide services in a courteous and efficient manner, within the parameters of federal and state law.

(2) ~~The unemployment insurance division is divided into~~

~~three bureaus:~~

~~(a) benefits;~~

~~(b) contributions; and~~

~~(c) planning and evaluation.~~

The rules in this chapter were drafted and are administered by the unemployment insurance division. However, to avoid confusion if the department is reorganized or the unemployment insurance division is re-named, the rules refer to the "department" as a whole.

(3) The address and contact numbers for the department's main office in Helena ~~is~~ are as follows: ~~P. O. Box 1728, Helena, MT, 59624. The phone number for the Helena office is: (406) 444-3555.~~

Unemployment Insurance Division
Montana Department of Labor and Industry
1327 Lockey Street
P.O. Box 8020
Helena, MT 59604-8020

Telephone: (406) 444-3555
Fax: (406) 444-1394
TTY/TTD: (406) 444-0532
e-mail: montanaui@state.mt.us

~~(4) The department's local job service offices also handle many unemployment insurance matters. There are 24 job service offices located throughout the state, with the following addresses and phone numbers:~~

~~Address~~	~~Phone number~~
~~Anaconda Job Service Office~~ ~~307 East Park~~ ~~Anaconda, MT 59711~~	~~563-3444~~
~~Billings East Job Service Office~~ ~~624 N. 24th St.~~ ~~Billings, MT 59101~~	~~248-7371~~
~~Billings West Job Service Office~~ ~~1425 Broadwater Ave.~~ ~~Suite E~~ ~~Billings, MT 59102~~	~~259-5529~~
~~Bozeman Job Service Office~~ ~~121 North Willson~~ ~~Bozeman, MT 59715~~	~~586-5455~~
~~Butte Job Service Office~~ ~~206 W. Granite~~ ~~Butte, MT 59703~~	~~782-0417~~
~~Cut Bank Job Service Office~~ ~~20 South Central~~ ~~Cut Bank, MT 59427~~	~~873-2191~~

~~Dillon Job Service Office~~ ~~683-4259~~
~~730 N. Montana~~
~~P. O. Box 1300~~
~~Dillon, MT 59725~~

~~Flathead Job Service Office~~ ~~752-5627~~
~~427 First Ave. E.~~
~~Kalispell, MT 59901~~

~~Glasgow Job Service Office~~ ~~228-9369~~
~~238 Second Ave. So.~~
~~Glasgow, MT 59230~~

~~Glendive Job Service Office~~ ~~365-3314~~
~~211 South Kendrick Avenue~~
~~Glendive, MT 59330~~

~~Great Falls Job Service Office~~ ~~761-1730~~
~~1018 Seventh Street South~~
~~Great Falls, MT 59405~~

~~Hamilton Job Service Office~~ ~~363-1822~~
~~333 Main Street~~
~~Hamilton, MT 59840~~

~~Havre Job Service Office~~ ~~265-5847~~
~~416 First Street~~
~~Havre, MT 59501~~

~~Helena Job Service Office~~ ~~449-6006~~
~~715 Front Street~~
~~Helena, MT 59601~~

~~Lewistown Job Service Office~~ ~~538-8701~~
~~300 1st Ave. N.~~
~~Lewistown, MT 59457~~

~~Lincoln County Job Service Office~~ ~~293-6282~~
~~317 Mineral Ave.~~
~~Libby, MT 59923~~

~~Livingston Job Service Office~~ ~~222-0520~~
~~228 South Main~~
~~Livingston, MT 59047~~

~~Miles City Job Service Office~~ ~~232-1316~~
~~12 North 10th Street~~
~~Miles City, MT 59301~~

~~Missoula Job Service Office~~ ~~728-7060~~
~~539 S. Third St. W.~~
~~Missoula, MT 59806~~

~~Polson Job Service Office 883-5261~~
~~417 Main Street~~
~~Polson, MT 59860~~

~~Shelby Job Service Office 434-5161~~
~~402 First Street South~~
~~Shelby, MT 59474~~

~~Sidney Job Service Office 482-1204~~
~~120 South Central~~
~~Sidney, MT 59270~~

~~Thompson Falls Job Service Office 827-3472~~
~~608 Main Street~~
~~Thompson Falls, MT 59873~~

~~Wolf Point Job Service Office 653-1720~~
~~217 3rd Avenue South~~
~~Wolf Point, MT 59201~~

AUTH: 2-4-201 and 39-51-302, MCA
IMP: 2-4-201 and 39-51-301, MCA

24.11.201 ADOPTION OF MODEL RULES (1) Remains the same.

(2) The department further adopts the following rules only to the extent such rules do not conflict with the hearing rules in subchapter 3 of this chapter:

(a) ARM 1.3.211 through 1.3.216;

(b) ARM 1.3.218 through 1.3.220; ~~and~~

(c) ARM 1.3.222 through ~~1.3.233.~~ 1.3.231; and

(d) ARM 1.3.233.

(3) ARM 1.3.217, ~~and~~ 1.3.221, and 1.3.232 have not been adopted because the rules of evidence and civil procedure are not binding in hearings on unemployment insurance matters.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 2-4-204 and 39-51-301, MCA

24.11.442 INITIAL MONETARY DETERMINATION--WAGES--REVISIONS

(1) After filing ~~a~~ an initial claim, a claimant will receive an initial monetary determination stating whether the claimant has sufficient wages to qualify for benefits.

(2) The initial monetary determination informs the claimant of:

(a) the department's records of the claimant's base period employer or employers;

(b) the amount of wages reported as having been paid in each of the calendar quarters of the base period;

(c) the potential amount of benefits the claimant may receive in the benefit year; and

(d) the effective date of the claim.

(3) Except for wages as described in (6), upon the request of a claimant, the department will adjust the distribution of the claimant's base period wages by assigning the wages to the calendar quarters in which the wages were earned rather than to the calendar quarters in which they were paid.

~~(3)~~(4) If a claimant's wage records have not been received, and the department has determined that the employer is subject to unemployment tax, the claimant may support the claim by affidavit or documented evidence for the department's consideration in establishing the amount of base period wages.

~~(4)~~(5) Generally, only wages actually or constructively paid determine the amount of wages in the claimant's base period. Wages are constructively paid if they are credited to the ~~employee's~~ worker's account or set apart for ~~an employee~~ a worker so that they may be drawn upon by the ~~employee~~ worker at any time, although not actually in the ~~employee's~~ worker's possession. However, unpaid wages may be considered if a claimant:

(a) completes an affidavit stating:

(i) the name and address of any employer from whom wages are due;

(ii) the amount of unpaid wages; and

(iii) the reasons why the wages have not been paid; and

(b) provides at least one of the following:

(i) a W-2 or 1099 form as required by the internal revenue service;

(ii) a signed statement from the employer affirming the truth of the claimant's affidavit;

(iii) a ~~certified~~ copy of the employer's schedule of assets and liabilities filed in a bankruptcy proceeding showing the unpaid wage claim;

(iv) a ~~certified~~ copy of the claimant's wage claim filed with the department, if the department has not dismissed the wage claim; or

(v) a ~~certified~~ copy of a decision of the department or a court of competent jurisdiction stating that the wages are owed the claimant.

~~(5)~~(6) The following payments are wages which ~~must be reported by employers on their quarterly reports in accordance with ARM 24.11.702, but these wage can be recorded in the wage record of the claimant after the filing of a claim, if necessary,~~ are assignable in the following ~~manner~~ periods:

(a) Payments made for termination of employment in insured work generally known or described as severance pay, separation pay, termination pay, wages in lieu of notice, continuation of wages for a designated period of time following cessation of work, or other similar payment, and payments made under an incentive, ~~employee~~ worker buy-out, or similar plan designed to produce a general or specific reduction in force by inducing ~~employees~~ workers to leave voluntarily or in lieu of involuntary termination, whether paid in a lump sum or incrementally over any period of time, are attributable to the quarter in which the separation from work occurred.

(b) Accrued vacation and sick leave paid at or after separation, other than a temporary layoff, are attributable to the quarter in which the separation from work occurred.

(c) Bonus, awards, incentives, rewards, profit sharing, and stocks are attributable to the quarter the payment was issued.

(d) Holiday pay is attributable to the quarter ~~in which the holiday occurred~~ the payment was issued.

(e) Payments received for accrued unused vacation, sick leave, compensatory time or other similar leave when separation has not occurred or during periods of temporary layoff are attributable to the quarter in which the payment was issued. These payments are sometimes also known as a "cash-out" of leave benefits.

(f) Backpay and settlements, in all cases, will be prorated back over the time the payment represents. Only the portion of the payment that is wages which would have been earned, or wages earned and not paid, will be applied to weeks claimed and quarterly wages.

(g) Use of vacation or sick leave, compensatory time or other similar leave paid during the course of employment in insured work, including periods of temporary layoff, for time off from work for vacation, whether voluntary or mandated, sick leave, or other leave with pay is attributable to the quarter ~~in which the time off from work occurred~~ the payment was issued.

(h) Royalties, residual payments, and commissions are attributable to the quarter in which the payment was issued.

~~(6)~~(7) Except as provided in this rule, the initial monetary determination is final unless a claimant requests revision of the determination within ~~ten~~ 10 days after the determination was mailed. Upon request of the department, the claimant may be required to provide proof of earnings, such as check stubs, W-2 forms, or statements from employers.

~~(7)~~(8) A monetary redetermination is final unless a claimant appeals the decision as provided in 39-51-2402 and 39-51-2403, MCA, within ~~ten~~ 10 days of the date the redetermination was mailed.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2105 and 39-51-2201 through 39-51-2204, MCA

24.11.443 ~~CONTINUED~~ BIWEEKLY CLAIMS (1) After ~~making an initial application for benefits in a benefit year, and in order to receive benefits,~~ filing an initial claim and establishing a valid claim for benefits, a claimant wishing to claim benefits or waiting period credit for any week that begins within the claimant's benefit year must file ~~bi-weekly~~ a ~~continued~~ timely biweekly claim for the week. ~~A claimant is required to file the continued claim via~~ The biweekly claim must be filed using the department's interactive voice response telephone system, ~~which is available for this purpose,~~ unless it is determined by the department that the claimant ~~cannot~~ is unable to use the system. In those instances, the claimant will be allowed to file ~~bi-weekly~~ biweekly claims ~~via a mail-in process~~ by mail using biweekly claim forms provided by the department.

(2) ~~Each continued claim covers two weeks. The week ending dates are stated in a message on the IVR system or are shown on the mail-in claim.~~

(a) The term "biweekly claim" refers to the manner in which continued claims, except as provided in (2)(b), must be filed. A biweekly claim consists of continued claims for any

two previously unclaimed consecutive weeks that begin within a claimant's benefit year. The biweekly claim must be filed after the Saturday of the second week, but no later than seven calendar days following the Saturday of the second week.

(b) When there is only one previously unclaimed week remaining that begins within a claimant's benefit year, a continued claim may be filed for that week alone. The continued claim must be filed after the Saturday of the week, but no later than seven calendar days following the Saturday of the week. For the purposes of this rule, the term "biweekly claim" includes a continued claim filed under this subsection.

(c) The department may extend the time allowed for filing a biweekly claim if it determines that the claimant had good cause for failing to file the claim within the time allowed. If no good cause is found for the delay in filing, benefits or waiting period credit, as the case may be, will be denied and the claimant may be required to reactivate the claim as provided in ARM 24.11.445.

(3) ~~In the use of the IVR system for filing the continued claim, a claimant must answer each question in order to certify eligibility for each week. A personal identification number which must be entered by the claimant, and is to be known only by the claimant, is considered to be the equivalent of the claimant's signature. For the mail-in continued claim, a claimant must answer each question on the claim and sign it, or it will be returned to the claimant for completion.~~ When filing a biweekly claim using the interactive voice response telephone system, a claimant must enter the claimant's social security number and personal identification number to access the system and must answer each question asked by the system. The claimant's personal identification number, which is established by the claimant and unknown to the department and which the claimant is required to keep confidential, is considered to be the equivalent of the claimant's signature certifying that the claimant's responses to the questions asked by the system are true and accurate to the best of the claimant's knowledge. When filing a biweekly claim by mail, a claimant must answer each question on the biweekly claim form and sign the form to certify that the claimant's responses to the questions are true and accurate to the best of the claimant's knowledge.

(4) A claimant must report all hours of insured work and gross wages for insured work for each week claimed. ~~A claimant must report all earnings~~ The wages must be reported ~~in~~ for the week in which they were earned ~~and not~~ rather than for the week in which they were paid, except as otherwise provided in this rule. ~~For purposes of this rule, earnings are wages as defined in 39-51-201, MCA, and as further clarified by example in this rule.~~

(a) Any reduction in hours of work or wages for any week claimed caused by a claimant's absence from work for reasons other than a lack of work cannot be taken into account in determining whether the claimant was totally unemployed in that week, so as to be eligible for full or partial benefits or waiting period credit for the week. For that reason, all time

off from work, whether paid or unpaid, during a week claimed for reasons other than a lack of work is considered as hours of work for the week. Similarly, wages lost for unpaid time off from work for reasons other than a lack of work are considered as gross earnings for the week.

~~(a)~~(b) Payments made for termination of employment in insured work generally known or described as severance pay, separation pay, termination pay, wages in lieu of notice, continuation of wages for a designated period of time following cessation of work, or other similar payment, and payments made under an incentive, ~~employee~~ worker buy-out, or similar plan designed to produce a general or specific reduction in force by inducing ~~employees~~ workers to leave voluntarily or in lieu of involuntary termination, whether paid in a lump sum or incrementally over any period of time, must be reported for the week in which the separation from work occurred.

~~(b) Accrued vacation and sick leave paid at or after separation, other than a temporary layoff, must be reported for the week in which the separation from work occurred.~~

(c) Payments for bonuses ~~Bonus~~, awards, incentives, rewards, profit sharing, ~~and stocks~~ whether in cash or in the form of securities, must be reported for the week in which the payment was received.

(d) Holiday pay and the hours paid must be reported as wages and hours worked for the week in which the holiday occurred.

(e) Payments for accrued vacation, sick leave, or other leave paid at or after termination from work must be reported for the week in which the termination occurred.

~~(e)~~(f) Payments ~~received~~ for accrued unused vacation, sick leave, ~~compensatory time~~ or other ~~similar~~ leave when ~~separation~~ a termination from work has not occurred ~~or during periods of temporary layoff~~ must be reported by the claimant ~~on the continued claim~~ for the week in which the payment was received. These payments are sometimes ~~also~~ known as a "cash-out" of accrued leave ~~benefits~~.

~~(f)~~(g) Payments for the use of vacation, ~~or~~ sick leave, ~~compensatory time~~ or other ~~similar~~ leave paid during the course of employment in insured work, including periods of temporary layoff, for time off from work ~~for vacation~~, whether voluntary or mandated, ~~sick leave, or other leave with pay~~ must be reported for the week during which the time off from work occurred.

~~(g)~~(h) Royalties, residual payments, and commissions must be reported as earnings for the week in which the payment was received. The hours must be reported for the week in which the work was performed.

(5) ~~A claimant must file a continued claim with the department within seven days of the last week ending date on the claim. The department may extend the time limit for receipt of continued claims if the claimant shows good cause for the delay Otherwise, the department may require a claimant to reactivate the claim.~~

~~(6) If a claimant files a redetermination request or an~~

~~appeal, the claimant must also file continued claims for each week the redetermination or appeal is pending.~~ A claimant must file timely biweekly claims during the pendency of a monetary determination, a non-monetary determination, or an appeal, in order to claim benefits or waiting period credit for that week or weeks.

AUTH: 39-51-301, 39-51-302, MCA
IMP: ~~39-51-2101 through 39-51-2308~~ 39-51-201 and Title 39, chapter 51, parts 21 through 23, MCA

24.11.457 LEAVING WORK WITH OR WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYMENT (1) A claimant has left work with good cause attributable to employment if:

(a)(i) compelling reasons arising from the work environment caused the claimant to leave; and

(ii) the claimant attempted to correct the problem in the work environment; and

(iii) the claimant informed the employer of the problem and gave the employer a reasonable opportunity to correct it; or

(b) the claimant left work which the department determines to be unsuitable under 39-51-2304, MCA. For the purpose of this rule, ~~a job~~ work is not unsuitable if the claimant ~~was employed~~ worked in that same occupation during more than 6 weeks ~~during the period that starts at~~ from the beginning of the base period ~~and runs~~ through the ~~present~~ date of leaving. However, the mere fact that the claimant ~~has been employed~~ worked in an occupation during ~~less than~~ 6 weeks or less does not, by itself, mean that the occupation is "unsuitable".

(2) The term "compelling reasons" as used in this rule includes but is not limited to:

(a) undue risk, as compared to work in similar occupations or industries, of injury, illness, physical impairment, or reasonably foreseeable risks to the claimant's morals;

(b) ~~unreasonable actions~~ long-term, adverse changes implemented by the employer concerning hours, wages, terms of employment or working conditions, including, but not limited to, ~~unilaterally imposed~~ reductions of 20% or more in the claimant's customary wages or hours;

(c) ~~an illness or injury caused by the work environment or working conditions which would jeopardize the claimant's health if the claimant were to remain employed, if such illness or injury, its cause, and the effect of the claimant remaining employed are verified by a statement from a licensed and practicing physician, chiropractor or osteopath~~ a condition underlying a workers' compensation or occupational disease claim for which liability has been accepted by a workers' compensation insurer. However, upon recovery from that condition, as certified by a licensed and practicing physician or chiropractor, the claimant must offer to return to work or be disqualified for leaving work without good cause attributable to the employment, unless there is substantial evidence concerning the nature, severity, duration, and prognosis of the illness or injury, verified by a licensed and practicing physician or chiropractor, to establish that the claimant's health would be

substantially jeopardized by returning to the claimant's regular or comparable suitable work; or

(d) unreasonable rules or discipline by the employer so severe as to constitute harassment.

~~(3) A claimant who voluntarily leaves work to attend school has left work without good cause attributable to employment. Under 39-51-2302, MCA, the claimant can requalify for benefits, other than extended benefits, without earning the required six times weekly benefit amount if:~~

~~(a) the school schedule would have interfered with the previous employment; and~~

~~(b) the school is an accredited educational institution which the student has regularly attended for at least 3 consecutive months from the date of enrollment.~~

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2302, ~~39-51-2307,~~ MCA

24.11.458 SELF-EMPLOYMENT (1) ~~Self-employment is not disqualifying~~ A claimant who is engaged in self-employment will not be determined to be ineligible for benefits under 39-51-2304, MCA, or ARM 24.11.452 solely by reason of the claimant's time commitment to the self-employment venture provided that the claimant is available for~~,~~ and actively seeking full-time insured work and is willing to accept an offer of or a referral to ~~other~~ suitable full-time insured work, even if it would be necessary for the claimant to forego all or a part of the self-employment venture in order to accept the offer or referral ~~as required by 39-51-2104, MCA~~.

~~(2) If self-employment is casual in nature and the claimant is available to accept suitable work in the general labor market, then a claimant will not be disqualified from receipt of benefits. The claimant is required to seek work and must be willing to accept suitable employment.~~

~~(3) A claimant will be disqualified under 39-51-2104, MCA if the claimant:~~

~~(a) is not available for suitable work because the claimant intends to make self-employment a full-time occupation; or~~

~~(b) is available for suitable work for a temporary period and only until the claimant returns to self-employment.~~

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2304, ~~39-51-2308,~~ MCA

24.11.463 LIE DETECTOR TESTS--~~BLOOD AND URINE~~ DRUG AND ALCOHOL TESTING (1) A claimant will not be disqualified for benefits under this chapter solely for the reason that the claimant~~:~~

~~(a)~~ is denied ~~employment~~ work or continuation of ~~employment~~ work for refusing to submit to a polygraph test or any form of a mechanical lie detector test, or on the basis of the results of any such test.~~; or~~

~~(b) is denied employment or continuation of employment for refusing to submit to a blood or urine test, or on the basis of the results of any such test, unless the test is appropriately~~

~~administered pursuant to 39-2-304, MCA.~~

(2) A claimant will not be disqualified for benefits under this chapter solely for refusal to submit to drug or alcohol testing required by an employer or prospective employer, or on the basis of the results of such a test, unless the testing procedures fully comply with federal drug and alcohol testing statutes and regulations applicable to private sector workers, or the provisions of the Workforce Drug and Alcohol Testing Act found in Title 39, chapter 2, MCA.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2302, 39-51-2303, 39-51-2304, MCA

24.11.464 BENEFITS BASED ON SERVICES IN EDUCATIONAL INSTITUTIONS AND EDUCATIONAL SERVICE AGENCIES (1) For the purpose of this rule, the following definitions apply~~, unless the context clearly indicates otherwise~~:

~~(a) "Educational institution" means all elementary and secondary schools and institutions of higher education, including private and government operated schools. To be an educational institution it is not necessary for the school to be non-profit or controlled by a school district, but the instruction provided must be sponsored by an institution which meets all of the following conditions:~~

~~(i) participants are offered an organized course of study or training designed to give them knowledge, skills, information, doctrines, attitudes or abilities from, by, or under the guidance of an instructor(s) or teacher(s);~~

~~(ii) the course of study or training offered is academic, technical, trade, or preparation for gainful employment in an occupation;~~

~~(iii) the institution must be approved, licensed or issued a permit to operate as a school by the office of public instruction or other government agency authorized to issue such license or permit.~~

~~(b) "Educational services agency" means, as defined by 39-51-2108, MCA, a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such service to one or more educational institutions.~~

~~(c)~~(a) "Non-professional" means services ~~that are not~~ in other than a professional capacity.

~~(d)~~(b) "Professional" means services ~~that are~~ in an instructional, research or principal administrative capacity.

(i) Individuals who perform services in an instructional capacity include not only those who teach in formal classroom and seminar situations, but also in less formal arrangements, such as tutorial relationships, and those who direct or assist students in research and learning.

(ii) Individuals who perform services in a research capacity include those who direct a research project and those staff directly engaged in gathering, correlating, and evaluating information and making findings.

(iii) Individuals who perform services in a principal administrative capacity include school principals, school superintendents, officers of the institution, the board of

directors, business managers, deans, associate deans, university public relations directors, comptrollers, development officers, chief librarians, registrars, and any individuals who, although they may lack official titles, actually serve in a principal administrative capacity.

~~(e)~~(c) "Reasonable assurance" means:

(i) as it relates to the probability of performing services in the next academic year or term, that there is a written, oral or implied agreement that the ~~employee~~ worker will perform services in the same ~~or similar~~ capacity in the next academic year or term. However, reasonable assurance does not exist if the economic terms and conditions are substantially less than the economic terms and conditions of the job in the previous academic year or term. For the purposes of this rule, "substantially less" means a difference of 20% or more.

(A) ~~An employee~~ A worker who performed services in the ~~preceding~~ first of any two academic ~~year or term~~ years or terms for an educational institution ~~will be~~ is considered to have reasonable assurance of performing services in the same ~~or similar~~ capacity for that educational institution in the ~~next~~ second academic year or term, ~~if~~ regardless of whether the worker is required to reapply for a position, the worker has advised the institution of the worker's intention not to return to work in the subsequent academic year or term, or the educational institution has advised the worker or the department that employment in the next academic year or term is contingent upon adequate funding or enrollment, unless:

(I) the ~~employee~~ worker has been given ~~a bona fide offer of a specific job, the economic terms and conditions of which are not substantially less than the economic terms and conditions of the job in the preceding academic year or term, in the same or similar capacity in the next academic year or term. For the purposes of this definition, a "bona fide offer" does not exist unless the offer of employment:~~

~~(A) was made by an individual with the authority to make such an offer on behalf of the employer; and~~

~~(B) the circumstances under which the employee would be employed are within the control of the employer or the employer can provide evidence that the employee would normally or customarily perform services under similar circumstances in the following academic year or term; or~~ unequivocal notice that the worker will not be rehired for the subsequent academic year or term;

(II) the department determines that there is not a pattern, either as to the particular worker or as to the class of workers to which the worker belongs, of such notice being followed by subsequent reemployment by the educational institution; and

(III) the department determines that there is not substantial evidence of a continuing work relationship between the worker and the educational institution during the period between first and subsequent academic years or terms, including but not limited to, the continuance of employee benefits during the period.

(B) A worker who performed services in the first academic

year or term for an educational institution is considered to have reasonable assurance of performing services in the same capacity for another educational institution in the subsequent academic year or term if the worker has been given a bona fide offer, whether or not accepted by the worker, of a specific job in the same capacity as the services performed in the first academic year or term by an individual with the authority to make such an offer on behalf of the educational institution.

(ii) as it relates to the probability of performing services following a customary vacation break or holiday recess, that there is a written, oral or implied agreement that the ~~employee~~ worker will perform services in any capacity, professional or non-professional, following a customary vacation break or holiday recess. In the absence of substantial evidence to the contrary, ~~an employee~~ a worker who performed services for an educational institution immediately preceding a customary vacation break or holiday recess will be considered to have reasonable assurance of performing services in some capacity ~~for the remainder of the term~~ for an educational institution in the period immediately following the vacation break or holiday recess.

~~(f)~~(d) "Same ~~or similar~~ capacity" means that the ~~employment~~ work offered is in the class of capacity, ~~(~~either professional or non-professional~~),~~ ~~as~~ of the ~~previous~~ service performed in the first academic year or ~~term's service~~ term.

~~(2) 39-51-2108, MCA, provides that employees of educational institutions will be ineligible to receive unemployment insurance benefits, based on such educational employment, between academic years or terms and during customary vacation periods and holiday recesses within terms if the employee has a "reasonable assurance" of performing services in any educational institution in the following year, term, or remainder of a term. These provisions also apply to employees of educational service agencies if the employee has a "reasonable assurance" of performing services in any educational service agency in the following year, term, or remainder of a term.~~

~~(3)~~(2) ~~An employee~~ A worker who is initially determined not to have reasonable assurance will be denied benefits between academic years or terms and during customary vacation periods and holiday recesses within terms from the point forward that the ~~employee~~ worker is determined to have subsequently received reasonable assurance.

~~(4)~~(3) ~~Employees of~~ Workers at educational institutions or educational service agencies who customarily work for the educational institution or educational service agency during the period between academic years or terms or during customary vacation periods or holiday recesses within terms are not subject to the ~~ineligibility~~ provisions of ~~this rule~~ 39-51-2108, MCA.

~~(5) If the claimant's benefits are based on services in a professional capacity and the claimant was previously determined to have reasonable assurance, but continues to be unemployed when school commences, the claimant may be allowed benefits from~~

~~the date the offer of employment was withdrawn or from the date the claimant was given reasonable assurance if it is determined that the original offer of employment was not a bona fide offer.~~

~~(6) If the claimant's benefits are based on services in a non-professional capacity, retroactive payments may be paid if the claimant:~~

~~(a) continues to be unemployed when the second academic year or term commences;~~

~~(b) filed weekly claims in a timely manner; and~~

~~(c) was denied benefits solely because of the provisions of 39-51-2108, MCA.~~

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2108, MCA

24.11.466 BENEFIT OVERPAYMENTS--NOTICES AND APPEAL RIGHTS

(1) Claimants are notified of disqualifications, ineligibilities, and reductions in benefit entitlement by:

(a) non-monetary determinations;

(b) appeals decisions, including redeterminations; and

(c) revised monetary determinations.

(2) If a decision or determination described in (1) results in a benefit overpayment, the claimant will receive a separate benefit overpayment notice in addition to the notice of that decision. A claimant may appeal the non-monetary determination, appeals decision, revised monetary determination or determination of benefit overpayment due to unreported or misreported earnings as provided under 39-51-2402 and 39-51-2403, MCA. The separate benefit overpayment notice may be appealed only as to the accuracy of the amount of the benefit overpayment.

~~(1)~~(3) ~~All~~ Any benefit overpayment~~s of benefits~~ must be repaid to the department, regardless of the cause of the benefit overpayment, unless the ~~claimant obtains a waiver~~ department waives recovery of the benefit overpayment in accordance with ARM 24.11.467.

~~(2) If, after a preliminary investigation, there is reason to believe that an overpayment occurred, the department sends to the claimant a notice containing the following information:~~

~~(a) the information obtained during the department's investigation;~~

~~(b) a statement asking the claimant to respond within 7 days to the information either by mail or in person to the local office and schedule an appointment with the local office; and~~

~~(c) a statement explaining the claimant's rights and responsibilities.~~

~~(3) If, after the claimant's response is received or the allotted time has expired, and if the department finds an overpayment exists, the department issues an overpayment determination and notifies the claimant of appeal rights under section 39-51-2402 and 39-51-2403, MCA.~~

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3206, MCA

24.11.467 WAIVER OF RECOVERY OF BENEFIT OVERPAYMENTS

(1) For the purposes of this rule:

(a) "assets" include, but are not limited to:

(i) cash on hand;

(ii) bank, credit union, savings and loan, and brokerage accounts;

(iii) securities, excluding those held as part of a qualified retirement plan;

(iv) cash-value insurance policies;

(v) real and personal property, excluding the claimant's primary residence and one primary vehicle.

(b) "average cash flow" means six times the amount obtained by subtracting average monthly expenses from average monthly income, even if the amount is less than zero.

(c) "average monthly expenses" means the amount of all necessary and allowed expenses, converted to a monthly basis if not incurred in that manner, incurred by the claimant at the time of the claimant's request for waiver.

(d) "average monthly income" means the amount of all income, converted to a monthly basis if not paid in that manner, accruing to the claimant at the time of the claimant's request for waiver.

(e) "income" includes, but is not limited to:

(i) wages, salaries, and commissions;

(ii) interest and dividends;

(iii) net business proceeds;

(iv) rents;

(v) pensions;

(vi) disability payments; and

(vii) alimony.

(f) "necessary and allowable expenses" are limited to:

(i) rent or mortgage payments;

(ii) insurance, taxes, utilities, basic phone service;

(iii) groceries and household supplies for a primary residence, but not to exceed $300 per month for the claimant and $100 per month for each of the claimant's dependents that reside with the claimant;

(iv) medical expenses not paid by insurance;

(v) loan payments, insurance, and expenses for a primary vehicle;

(vi) work-related child and disabled dependent care expenses;

(vii) child support payments; and

(viii) alimony or maintenance payments.

~~(1)~~(2) Not sooner than 24 months following the date the claimant was given notice of the overpayment, a ~~A~~ claimant may request ~~a waiver of an~~ the department waive recovery of a benefit overpayment ~~determination~~ as provided in 39-51-3206, MCA.

~~(2)~~(3) The department ~~considers the following factors in reviewing requests for waivers~~ may waive recovery of all or a portion of a benefit overpayment if:

(a) ~~the degree of the claimant's fault;~~ the benefit overpayment is not a fraudulent benefit overpayment as defined in ARM 24.11.468(1); and

(b) ~~the cause of the overpayment, including whether a decision from an appeals referee caused the overpayment, and whether the claimant was advised that repayment is required if benefits are denied in the appeals process; and~~ it is shown to the satisfaction of the department that recovery of the benefit overpayment would cause a long-term financial hardship on the claimant; and

(c) ~~the claimant's ability to repay, including whether repayment would cause a lasting and extraordinary financial hardship on the claimant. Extraordinary financial hardship as used in this chapter means the claimant would be unable to provide the minimal necessities of food, shelter, clothing and medicine to himself/herself and immediate family as a result of the division's recovering the benefit overpayment. Lasting financial hardship means the financial hardship is expected to exist for more than 180 days.~~ the benefit overpayment was not the result of a reversal, modification, or revision on appeal of an earlier determination, redetermination, or decision which allowed the payment of benefits, unless the benefit overpayment was the result of a monetary determination that was revised due to employer reporting error or clerical error on the part of the department or an agent of the department.

(4) In determining whether recovery of the benefit overpayment would cause a long-term financial hardship on the claimant, as provided in (3)(b), the department takes into account the claimant's average household cash flow and net value of household assets. The claimant requesting a waiver is required to provide documentation of income, assets, and expenses on a form provided by the department and may be required to provide further information if needed for the department's determination. The department may require verification of any financial information provided. The department may also disallow or adjust any claimed expenses that it deems to be unreasonably excessive. If the department finds that the sum of the claimant's average household cash flow and the net value of the claimant's household assets equals an amount less than the amount of the benefit overpayment in question and finds no evidence that the claimant's average household cash flow or the net value of the claimant's household assets are, within the 12 months immediately following the date of the claimant's request for waiver, likely to increase in an amount that would cause the sum of the two to exceed the amount of the benefit overpayment, recovery of the benefit overpayment will be deemed to cause a long-term financial hardship on the claimant.

~~(3)~~(5) ~~The~~ After consideration of a claimant's request for waiver, the department notifies the claimant of its ~~determination~~ decision either to grant or to deny the request and of the claimant's right to appeal under ~~sections~~ 39-51-2402 and 39-51-2403, MCA.

~~(4)~~(6) A claimant whose request for waiver has been denied only by reason of the provisions of (3)(b) may ~~ask for a redetermination of the department's decision~~ submit a new request for waiver if the claimant's financial situation has

significantly changed since the ~~initial determination~~ denied request was filed.

~~(5) The department does not consider waiver requests for fraudulent overpayments as defined in sections 39-51-3201 and 39-51-3203, MCA, and ARM 24.11.468.~~

~~(6)~~(7) Repayment of a~~n~~ benefit overpayment by offset of benefits continues ~~while~~ during the time a claimant's request for waiver ~~application~~ is ~~processed~~ under consideration and until a ~~waiver~~ determination either allowing or denying the claimant's request for waiver, including any appeals decision, ~~is~~ becomes final. If a request for waiver is ~~granted~~ allowed, the claimant is reimbursed for ~~the overpayment from monies~~ any repayments collected after the date ~~a completed~~ the claimant's request for waiver ~~application~~ was received by the department.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3206, MCA

24.11.475 DISQUALIFICATION BECAUSE OF STUDENT STATUS--APPROVAL OF TRAINING BY THE DEPARTMENT (1) ~~Section 39-51-2307(1), MCA, denies benefits to individuals who do not have a genuine attachment to the labor market because of their regular secondary school attendance or full time attendance at an institution of higher education in the pursuit of a bachelor's or higher degree or in a program of post graduate or post doctoral studies.~~ An individual is considered to be "regularly attending an established educational institution," as that phrase is used in 39-51-2307, MCA, if the individual is enrolled as a student at an educational institution in a full-time class, course, or program of training, instruction, or study and participates on a recurring basis in activities required as part of the class, course, or program of training, instruction, or study.

(2) ~~Section 39-51-2307(2), MCA, allows the department to pay benefits to individuals engaged in other types of training which, as determined by the department, represent for those individuals the most reasonable and appropriate approach to reemployment in stable employment which utilizes their skills and abilities to the greatest possible degree.~~

~~(3)~~ Training that may be approved under this ~~section~~ rule includes, but is not limited to, job search workshops and vocational or technical training, including basic education required as a prerequisite to such training, conducted as part of a program designed to prepare individuals for gainful ~~employment~~ work in recognized occupations and in new and emerging occupations. Short-term vocationally-directed academic courses may also be approved. The department may approve training for any claimant under the following conditions:

(a) the training, as determined by the department, represents for the claimant the most reasonable and appropriate approach to reemployment in stable work which utilizes the claimant's skills and abilities to the greatest possible degree;

(b) the training facility is approved by the department and by the agency of state government authorized to approve training facilities with respect to curriculum, facilities,

staff and other essentials necessary to achieve the training objective, including appropriate standards and practices as to satisfactory attendance and performance of trainees;

(c) the claimant's skills are in need of upgrading:

(i) due to technological or other advances in the claimant's occupational field;

(ii) because present or impending demands for the claimant's skills are minimal or declining and are not likely to improve; or

(iii) in order to maintain a license or certificate required in the claimant's occupation or by the claimant's prospective or current employer;

(d) the class, course or program of training, instruction, or study will be completed within one semester or comparable term;

(e) the training course relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable work opportunities in any labor market area in the state in which the claimant intends to seek work;

(f) the claimant has aptitudes or skills which can be usefully supplemented by the training;

(g) in general, the claimant's present occupational situation is one which could be improved by the training; or

(h) the claimant is participating in training or in a retraining activity approved under a federal job training program under which the department is prohibited from denying benefits. For the purposes of this subsection, a retraining activity may include, but is not limited to, classroom training, occupational skill training, out-of-area job search, basic and remedial education, training in literacy and English for non-English speakers, entrepreneurial training, and other appropriate training activities directly related to appropriate work opportunities. Retraining activities may also include activities related to relocation to attend training, but participation in such activities will be approved for only one period of time during a claimant's benefit year, the length of which, not to exceed two consecutive weeks, is determined by the department to be reasonable given the circumstances of the relocation.

~~(4) The department will approve training for any claimant under the following conditions:~~

~~(a) The training facility is approved by the department and by the agency of state government authorized to approve training facilities with respect to curriculum, facilities, staff and other essentials necessary to achieve the training objective, including appropriate standards and practices as to satisfactory attendance and performance of trainees;~~

~~(b) The claimant's skills are in need of upgrading due to technological or other advances in the claimant's occupational field or present or impending demands for the claimant's skills are minimal or declining and are not likely to improve;~~

~~(c) The training course relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in any labor market~~

~~area in the state in which the claimant intends to seek work;~~

~~(d) The claimant has aptitudes or skills which can be usefully supplemented by the training; and~~

~~(e) In general, the claimant's present occupational situation is one which could be improved by the training.~~

~~(5)~~(3) ~~On a week-to-week basis a trainee meeting the foregoing qualifications may continue to receive benefits until benefits are exhausted~~ The department's approval of training remains in effect so long as ~~if~~ the training facility certifies on a week to week basis that the claimant is enrolled in and satisfactorily pursuing the training course~~.~~ and until:

(a) the end of the claimant's current benefit year;

(b) the beginning of a week that begins during a scheduled break in training that exceeds 14 days, excluding weekends and holidays, unless the training is normally conducted on weekends or holidays; or

(c) completion of the course or program of study of training.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2307, ~~39-51-2401,~~ MCA

24.11.616 BENEFIT OVERPAYMENTS--CREDITING EMPLOYER ACCOUNTS (1) and (2) Remain the same.

(3) A governmental entity or an employer electing to reimburse the fund is credited for an overpayment when the overpayment is recovered from the claimant or when the overpayment is waived. However, effective as of the date of the replacement of the department's computerized benefit payment and accounting system, expected to occur during calendar year 2000, charges to the accounts of governmental entities and employers electing to reimburse the fund will be credited for benefit overpayments in the same manner as experience-rated employers.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1110, MCA

REASON: There is reasonable necessity to amend ARM 24.11.101 in order to update information regarding the location of the Unemployment Insurance Division's physical and mailing address and to delete information regarding local Job Service offices. With the completion of the transition to a telephone claims system, applicants for unemployment insurance benefits are no longer required to apply in person. As a consequence, local Job Service offices may no longer have the expertise to assist applicants, and the amendments clarify that fact. In addition, the proposed amendments make technical changes to the rule.

There is reasonable necessity to amend ARM 24.11.201 in order to correctly reflect which of the attorney general's model rules apply to unemployment insurance matters.

There is reasonable necessity to amend ARM 24.11.442 in order to make technical changes to clarify that the department will, at the request of a claimant, re-assign wages in the manner specified, and to make technical changes to incorporate the

definitions of NEW RULE I.

There is reasonable necessity to amend ARM 24.11.443 in order to make technical changes to clarify and reflect the operations of the telephone claims system and to reflect the use of the proposed new definitions contained in NEW RULE I. The proposed amendments are being coordinated to occur in conjunction with the expected October 2000 implementation of the Department's new unemployment insurance benefits computer system, known as MISTICS.

There is reasonable necessity to amend ARM 24.11.457 in order to make technical changes to clarify the meaning of the rule and to reflect the use of the proposed new definitions contained in NEW RULE I. The proposed amendments are being coordinated to occur in conjunction with the expected October 2000 implementation of the Department's new unemployment insurance benefits computer system, known as MISTICS.

There is reasonable necessity to amend ARM 24.11.458 in order to make technical changes to clarify the meaning of the rule and to reflect the use of the proposed new definitions contained in NEW RULE I. In addition, the proposed amendments are consistent with certain provisions of Chapter 400, Laws of 1999. The proposed amendments are being coordinated to occur in conjunction with the expected October 2000 implementation of the Department's new unemployment insurance benefits computer system, known as MISTICS.

There is reasonable necessity to amend ARM 24.11.463 to correct the citation to Montana's drug and alcohol testing statutes and clarify the rule with regards to workforce drug and alcohol testing.

There is reasonable necessity to amend ARM 24.11.464 in order to clarify under what conditions certain individuals employed by an educational institution are eligible or ineligible for unemployment insurance benefits. The Department has recently been made aware that existing language does not adequately address the situations that various applicants for benefits present when making a claim for benefits. The proposed amendments are being coordinated to occur in conjunction with the expected October 2000 implementation of the Department's new unemployment insurance benefits computer system, known as MISTICS.

There is reasonable necessity to amend ARM 24.11.466 to clarify and update the notice and appeal rights that relate to benefit overpayments. The proposed amendments coordinate with proposed amendments to ARM 24.11.467, and are being coordinated with the expected October 2000 implementation of the Department's new unemployment insurance benefits computer system, known as MISTICS.

There is reasonable necessity to amend ARM 24.11.467 to clarify under what circumstances the Department will waive repayment of overpaid benefits. The Department has observed that the current language does not adequately provide for objective criteria for judging the claimed financial hardship. In addition, the Department has observed that six months may not be sufficiently "long-term" within the meaning of 39-51-3206, MCA, for judging financial hardship, and that a longer period for judging the impact of a claimed "long-term financial hardship" is more in keeping with the purpose of the unemployment insurance laws and the obligations to the unemployment insurance trust funds. The proposed amendments coordinate with proposed amendments to ARM 24.11.466, and are being coordinated with the expected October 2000 implementation of the Department's new unemployment insurance benefits computer system, known as MISTICS.

There is reasonable necessity to amend ARM 24.11.475 to clarify what sort of training and study can be considered in obtaining a training wavier, in light of recent technology changes. In addition, there is reasonable necessity to amend the rule to take into account the definition of "educational institution" that is in proposed NEW RULE I.

There is reasonable necessity to amend ARM 24.11.616 in order to provide certain reimbursable employers more accurate and timely credit for repayment of overpaid benefits that will be available with the implementation of the Department's new unemployment insurance benefits computer system, known as MISTICS.

4. The Department proposes to adopt nine new rules as follows:

NEW RULE I DEFINITIONS The terms used by the department are, in great part, defined in 39-51-201 through 39-51-205, MCA. In addition to these statutory definitions, the following definitions apply to this chapter, unless context or the particular rule provides otherwise:

(1) "Additional claim" means a claim that is reactivated as provided in ARM 24.11.445(2) following one or more separations from insured work occurring subsequent to the filing of an initial claim or of a prior additional claim.

(2) "Adjudicate" means to make a determination, redetermination, or decision relative to an issue that exists on a claim.

(3) "Appeal" means a request by an interested party aggrieved by a determination, redetermination, or decision for a review of the determination, redetermination, or decision at the next higher level of review.

(4) "Appropriate telephone center" means the unemployment insurance telephone center that serves the geographical area in which a claimant resides.

(5) "Base period employer" means an employer from whom a claimant earned wages for insured work during the base period of the claim.

(6) "Benefit overpayment" means the amount of benefits paid to a claimant to which it is subsequently determined the claimant was not entitled by reason of disqualification, ineligibility, or reduction in entitlement.

(7) "Claim," as used in this chapter and in Title 39, chapter 51, MCA, unless the context or language clearly indicates otherwise, means an initial, additional, reopened, continued, or biweekly claim.

(8) "Claimant" means a person who has filed, or is in the process of filing, an initial claim.

(9) "Continued claim" means a notice filed by a claimant stating whether or not the claimant wishes to claim benefits or waiting period credit for any week that begins within the claimant's benefit year.

(10) "Days" means a specified number of consecutive days, not excluding Saturdays, Sundays, and holidays except as provided in [NEW RULE II].

(11) "Discharge," as used in 39-51-2303, MCA, means a termination of the work relationship between an employer and a worker initiated by the employer, for reasons other than a lack of work, whether or not in response to some act or omission on the part of the worker.

(12) "Educational institution," as used in 39-51-2108 and 39-51-2307, MCA, means any public, private, or non-profit academic, vocational, technical, business, professional, or other school (including a home school), college, or university that offers educational credentials and/or educational services.

(13) "Educational credential" means a degree, diploma, certificate, transcript, report, document, letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to mean enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites of a class, course or program of training, instruction, or study.

(14) "Educational service" means a class, course, or program of training, instruction, or study.

(15) "File" or "filing" means:

(a) with respect to an appeal of a determination, redetermination, or decision regarding a claim for benefits, an interested party's communication to the department, in the manner and within the time prescribed by the department, of that party's desire to have that determination, redetermination, or decision reviewed or heard by the next highest level of adjudication;

(b) with respect to a claim for benefits, a communication to the department, in the manner and within the time prescribed by the department, of a claimant's desire to establish an initial claim, reactivate an inactive claim, or make a biweekly claim;

(c) with respect to information required by the department for the proper administration of a claim or information an interested party wishes the department to consider regarding a claim, a communication to the department, in the manner and within the time prescribed by the department, conveying the

purpose and substance of the information;

(d) with respect to records kept by the department for unemployment insurance matters, the place where such records are stored or the act of placing information into the place where such records are stored. The department's records may be stored in a variety of media, including traditional paper copies, microfilm, and electronic or magnetic formats, or a combination of those media.

(16) "Full-time work" means insured work in which a worker is regularly scheduled to work 40 or more hours per week.

(17) "Good cause" means reasonably compelling circumstances which did not result from any act or omission on the part of the person claiming good cause and which could not be overcome by reasonable diligence on the part of the person.

(18) "Initial claim" means a request filed by a claimant for a determination of the claimant's potential entitlement to and eligibility for benefits.

(19) "Insured work" means services deemed to be employment in any state pursuant to an arrangement under 39-51-504(1), MCA, and employment as defined in 39-51-203, MCA, but does not include those services enumerated in 39-51-204, MCA, except for federal civilian service, federal military service, and services that constitute employment in any other state, provided that those services and the wages therefore are potentially:

(a) assignable to this or another state pursuant to 20 CFR 609 or 20 CFR 614; or

(b) transferable to this state or another state pursuant to 20 CFR 616.

(20) "Issue" means any act, circumstance, or condition that has the potential to disqualify or make a claimant ineligible for benefits or to reduce the amount of benefits payable to a claimant.

(21) "Labor market area" means an economically integrated geographic area within which individuals can reside and find work within a reasonable distance or can readily change jobs without changing their place of residence.

(22) "Leaving work," as used in 39-51-2302, MCA, means:

(a) any permanent, long-term, or indefinite reduction in a worker's hours of insured work for a particular employer initiated by the worker, whether or not in response to some act or omission on the part of the employer and whether or not sanctioned by the employer; or

(b) failing to return to work following a period of temporary layoff or suspension if the worker knew or should have known that the layoff or suspension was no longer in effect and that work was once again available to the worker.

(23) "Long-term" means that the circumstance in question will or may reasonably be expected to continue to exist substantially unchanged for a period of time exceeding six consecutive weeks.

(24) "Monetary determination" means a determination of a claimant's potential entitlement to benefits based upon the amount and distribution of wages in the claimant's base period.

(25) "Non-monetary determination" means a decision

involving an issue relative to a claim for benefits that does not involve a claimant's potential entitlement to benefits based upon the amount and distribution of wages in the claimant's base period.

(26) "Permanent layoff" means an indefinite termination of the work relationship between an employer and a worker initiated by the employer due only to a lack of work for the worker to perform.

(27) "Reopened claim" means a claim that is reactivated as provided in ARM 24.11.445(2) when there have been no separations from insured work subsequent to the filing of an initial claim or of a prior additional claim.

(28) "Separation" means any reduction in a worker's hours of insured work for a particular employer.

(29) "Suspension" means an abeyance of the work relationship between an employer and a worker initiated by the employer for disciplinary, investigative, or other reasons not including a lack of work for the worker to perform.

(30) "Temporary layoff" means a suspension of the work relationship between an employer and a worker initiated by the employer due only to a lack of work for the worker to perform and where the employer intends to recall the worker at such time as work becomes available.

(31) "Termination" means either a discharge or a permanent layoff.

(32) "Valid claim" means an initial claim with base period wages of an amount sufficient to qualify the claimant for benefits under 39-51-2105, MCA, or under a comparable law of any other state, and which results in the establishment of a benefit year under 39-51-201, MCA, or under a comparable law of any other state, without respect to whether or not the claimant is otherwise qualified or eligible to receive benefits.

(33) "Week claimed" means any week with respect to which a claimant files a continued claim.

(34) "Week ending date" is the date on which the Saturday of any week falls.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: Title 39, chapter 51, parts 2, 21 through 24, MCA and 39-51-3206, MCA

NEW RULE II TIME ALLOWED AND PROCEDURE FOR FILINGS AND SUBMISSIONS (1) Whenever a particular thing is required to be filed with or submitted to the department within a certain number of days and the last day falls on a Saturday, Sunday, or holiday, the filing or submission may be done no later than the next business day. This subsection does not apply to the filing of biweekly claims under ARM 24.11.443.

(2) Except as provided for the filing of biweekly claims under ARM 24.11.443, if a filing or submission is required or allowed to be done by telephone, the person wishing to make the filing or submission must contact a customer service representative no later than the last day allowed to make the filing or submission, by calling the appropriate telephone center during the telephone center's published business hours,

and provide such information as the customer service representative may require to establish the identity of the person and the nature of the filing or submission the person intends to make. If a filing or submission is required or allowed to be done in writing, the writing must be delivered to the department either by mail or by facsimile and must contain such information as is needed to establish the identity of the person making the filing or submission and the nature of the filing or submission the person intends to make. Filings or submissions by mail must be postmarked no later than the last day allowed to make the filing or submission. Filings or submissions by facsimile must be received no later than the last day allowed to make the filing or submission. If the filing or submission is required or allowed to be done by electronic mail, the electronic mail message must be transmitted no later than the last day allowed to make the filing or submission and must contain such information as is needed to establish the identity of the person making the filing or submission and the nature of the filing or submission the person intends to make.

(3) Any determination, redetermination, or decision of an appeals referee relating to a claimant's entitlement to or eligibility for benefits or to an employer's chargeability for benefits becomes final unless an interested party appeals the determination, redetermination, or decision within 10 days after the determination, redetermination, or decision was mailed to the party's last known address.

(4) The department may accept any filing or submission made after the time allowed or extend the time allowed for any filing or submission to be made if the department determines that there is good cause to do so.

(5) Any individual can obtain an answer to an inquiry concerning the unemployment insurance program by submitting the inquiry by telephone, by facsimile, by mail, or by e-mail.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: Title 39, chapter 51, parts 11 through 13, and 21 through 24, MCA

NEW RULE III DETERMINING WHO IS AN INTERESTED PARTY

(1) An "interested party" is a person entitled to:

(a) receive notice of certain issues and proceedings relative to a claim;

(b) receive notice of determinations, redeterminations, and decisions relative to those issues; and

(c) contest determinations, redeterminations, or decisions relative to those issues.

(2) A claimant is an interested party to any and all issues relative to the claimant's claim.

(3) The department is an interested party to any and all issues relative to any claim.

(4) An employer is an interested party to any issue that is determinative of whether all or any portion of benefits paid to a claimant are chargeable to that employer's account pursuant to 39-51-1125, 39-51-1212, or 39-51-1214, MCA.

(5) If a claimant refuses an offer of work, the employer

making the offer is an interested party with respect to the issue of whether the claimant will be disqualified for failing to accept an offer of suitable work pursuant to 39-51-2304, MCA, but only if the claimant was employed by and earned wages from the employer after the beginning of the base period of the claim and prior to the offer of work.

(6) Any person who, upon written application, is found by the department to have a substantial interest in an issue may be deemed to be an interested party relative to that issue.

(7) A person described in (4) through (6) does not continue to be an interested party once the issues described therein are adjudicated and become final. Unless the person is found to be an interested party to issues that may subsequently arise, the person is not entitled to notice of those issues or notice of determinations, redeterminations or decisions relative to those issues nor does the person have standing to contest those determinations, redeterminations, or decisions.

(8) Any person may raise an issue relative to any claim and, provided the person's allegations are credible, the department may investigate the issue and make a determination of the claimant's eligibility for benefits. However, the person raising the issue, unless the person is an interested party, is not notified of the determination and does not have standing to contest the determination.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: Title 39, chapter 51, parts 11 and 12, 21 through 24, and 32, MCA

NEW RULE IV NON-MONETARY DETERMINATIONS AND REDETERMINATIONS--NOTICE (1) The department investigates and adjudicates all non-monetary issues that arise relative to claims for benefits and, on the basis of the information obtained, makes formal, written determinations and redeterminations of claimants' eligibility for benefits. In addition to the department's records, information may be obtained from the claimant, the claimant's employer(s), or any other sources. If the information obtained discloses no essential disagreement and provides a sufficient basis for a fair determination, the department investigates no further. If the information obtained from other sources differs substantially from that furnished by the claimant, the department affords the claimant the opportunity to review and respond to the information and to submit rebuttal evidence, if any. The department will consider evidence that is adverse to an interested party only after the party has been afforded an opportunity to review and respond to the evidence and to submit rebuttal evidence, if any. Notices of determination and redetermination are mailed to all interested parties, any of whom may appeal the same.

(2) Non-monetary issues fall into two categories, separation issues and non-separation issues. Separation issues involve the circumstances under which a claimant either left or was discharged from insured work. Non-separation issues involve the requirements claimants must meet to maintain continuing

eligibility for benefits, including, but not limited to, being able to work, available for work, and actively seeking work.

(3) When a non-monetary redetermination request is made and the department determines that there is no basis on which to modify or reverse the prior determination, the department may transfer the request to an appeals referee, in which case the department notifies the requesting party of its action. The appeals referee will conduct a hearing and issue a decision based on the evidence in the record as well as testimony and any new evidence obtained during the hearing.

(4) When the department obtains information that raises a non-monetary issue relative to a claim, but there is insufficient evidence upon which to base a determination or if the claimant has not had an opportunity to respond to the information, the department notifies the claimant of the existence of the issue and of the fact that payment of benefits otherwise due will be suspended pending an initial determination relative to the issue. The claimant has 10 days in which to provide information concerning the issue. If the claimant does not provide the requested information within the time allowed, the claimant is determined to be unavailable for work for failure to provide requested information, as provided in ARM 24.11.452(1)(b). The ineligibility is effective on the Sunday of the week during which the act or circumstance that forms the basis of the issue occurred or came into existence.

(a) If, within 10 days of the date of the initial determination, the claimant provides information and the department determines from that information the claimant should not have been made ineligible for benefits, the ineligibility is removed. If the claimant provides that information after the 10 days has elapsed, the ineligibility is ended either:

(i) as of the Saturday of the week immediately preceding the week in which the department receives the information, if the information is received on or before Tuesday of the week; or

(ii) as of the Saturday of the week during which the department receives the information, if the information is received on or after Wednesday of the week. If the department determines that the claimant had good cause for failing to provide the information within the 10 days, that ineligibility is removed.

(b) If, within 10 days of the date of the initial determination, the claimant provides information and the department determines from that information that the ineligibility can be ended as of a particular date, the ineligibility is ended as of the Saturday of the week in which that date occurred. If the claimant provides that information after the 10 days has elapsed, the ineligibility is ended either:

(i) as of the Saturday of the week immediately preceding the week in which the department receives the information, if the information is received on or before Tuesday of the week; or

(ii) as of the Saturday of the week during which the department receives the information, if the information is received on or after Wednesday of the week. If the department

determines that the claimant had good cause for failing to provide the information within the 10 days, that ineligibility is ended as of the particular date.

(5) A claimant who wishes to requalify for benefits as provided in 39-51-2302(2)(a) or (3), 39-51-2303(1)(a) and (b), or 39-51-2304(1), MCA, must provide evidence, subject to verification by the department, that the claimant has satisfied a particular requirement for requalification. If the department determines from the evidence that the claimant has satisfied the requirement, the disqualification is ended as of the Saturday of the week in which the claimant satisfied the requirement, provided that the claim was not inactive at that time. If the claim was inactive at that time, the disqualification is ended as of the Saturday of the week immediately preceding the effective date of the reopened or additional claim that reactivated the claim.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-2202, 39-51-2203, 39-51-2205, 39-51-2301 through 39-51-2304, 39-51-2402, 39-51-2507, 39-51-2508, 39-51-2511, 39-51-2602, 39-51-3201, 39-51-3202 and 39-51-3206, MCA

NEW RULE V ELIGIBILITY FOR BENEFITS (1) A claimant has not satisfied the requirements of 39-51-2104(1)(a), MCA, and is, therefore, ineligible for benefits if the claimant fails, without good cause, to:

(a) participate in an interview required by the department; or

(b) provide to the department, within 10 days of the date of a mailed, faxed or telephoned request, such information as the department may require for the proper administration of the claim.

(2) A claimant is not able to work, available for work, or actively seeking work, within the meaning of 39-51-2104, MCA, if the claimant is incapable of performing or is unwilling to seek, apply for, or accept a substantial amount of suitable work in the claimant's labor market area for which the claimant is reasonably fitted by experience, education or training, in the claimant's customary occupation or in an occupation determined by the department to be suitable for the claimant under 39-51-2304, MCA. For the purposes of this subsection, a "substantial amount" of suitable work means full-time work, except when a claimant is limited to less than full-time work due to a personal medical condition and:

(a) the medical condition and the resultant limitation are verified by a licensed and practicing physician;

(b) the majority of the claimant's base period wages were earned in less than full-time work to which the claimant was limited due to the personal medical condition;

(c) there exists a substantial amount of less than full-time work which is suitable for the claimant in the claimant's labor market area; and

(d) the claimant is able to work enough hours in any week at the prevailing rate of pay in the claimant's customary occupation or in an occupation determined by the department to

be suitable for the claimant to enable the claimant to earn an amount equal to at least the claimant's weekly benefit amount.

(3) A claimant is not available for work within the meaning of 39-51-2104, MCA, if the claimant:

(a) is, for reasons including, but not limited to, lack of transportation, lack of child or other dependant care, incarceration, vacation or travel, unwilling or unable to accept an offer of new work for more than two days in a benefit week if those days are normal days of work in the claimant's customary occupation or in an occupation determined by the department to be suitable for the claimant under 39-51-2304, MCA;

(b) leaves work within four weeks of the intended date of termination specified in a valid notice of termination, as described under [NEW RULE VI], provided that the leaving was in response to the notice of termination or for other reasons not constituting good cause attributable to the employment, provided that the claimant is not considered to be unavailable for work after the intended date of termination solely by reason of having left work; or

(c) is available only for temporary work, unless it is determined by the department that the claimant has good cause for the restriction and there exists a substantial amount of temporary work which is suitable for the claimant in the claimant's labor market area.

(4) A claimant will be considered to be seeking work as required by 39-51-2104, MCA, if the claimant is:

(a) making a reasonable independent search for work in a manner appropriate for conditions in the claimant's labor market area and for the claimant's customary occupation or for an occupation determined by the department to be suitable for the claimant; or

(b) "union attached," meaning that the claimant is a member in good standing and on the out-of-work list of a labor union that operates an exclusive hiring hall; or

(c) "job attached," meaning that the claimant:

(i) has a definite or approximate date of hire or recall to insured work at which the worker will be regularly scheduled to work 30 or more hours per week; or

(ii) is employed in insured work on a less than full-time basis, but has a reasonable expectation that the work will become full-time.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2104, and 39-51-2304, MCA

NEW RULE VI LEAVING OR DISCHARGE FROM WORK--SUSPENSIONS

(1)(a) When a worker gives a valid notice of leaving work to an employer and is discharged by the employer prior to the intended date of leaving, the worker is considered to have left work as of the intended date of leaving. The worker's discharge is considered to have been for reasons other than misconduct, provided that the discharge was solely in response to the notice of leaving or for other reasons not constituting misconduct. To be considered a valid notice of leaving, the notice must be formal, unconditional, specific as to an intended date of

leaving, and be communicated by the individual worker to the employer or to an agent of the employer authorized to receive such notices. If the notice is not valid, the worker will not be considered to have left work, but only to have been discharged for reasons other than misconduct, provided that the discharge was solely in response to the notice of leaving or for other reasons not constituting misconduct.

(b) In those instances where a worker attempts to retract a valid notice of leaving and the employer does not accept the retraction, the worker is considered to have left work as of the intended date of leaving.

(2)(a) When an employer gives a valid notice of termination to a worker and the worker leaves work prior to the intended date of termination, the worker is considered to have been discharged as of the intended date of discharge. If the period of time between the worker's leaving and the intended date of discharge is four weeks or less, the worker is considered to be unavailable for work during that time as provided in ARM 24.11.452(3)(c), provided that the worker's leaving was solely in response to the notice of discharge or for other reasons not constituting good cause attributable to the employment. If the period of time between the worker's leaving and the intended date of discharge is more than four weeks, the worker is considered to have left work as of the date of leaving, provided that the worker's leaving was solely in response to the notice of discharge or for other reasons not constituting good cause attributable to the employment. To be considered a valid notice of termination, the notice must be formal, unconditional, specific as to the individual worker and as to the intended date of termination, and be communicated to the individual worker by the employer or by an agent of the employer authorized to give such notices. If the notice is not valid, the worker will not be considered to have been terminated, but only to have left work without good cause attributable to the employment, provided that the leaving was solely in response to the notice of discharge or for other reasons not constituting good cause attributable to the employment.

(b) In those instances where an employer attempts to retract a valid notice of termination and the worker does not accept the retraction, the worker is considered to have been terminated as of the intended date of termination.

(3) A worker on temporary layoff who informs the employer of the worker's intention not to return to work following the temporary layoff or who simply does not return to work following the temporary layoff is considered to have left work as of the date the worker would have been recalled to work, provided that work was available in the worker's position at the time the worker would have been recalled.

(4) A worker is considered to have constructively left work when the worker committed an act or omission that made it impracticable for the employer to utilize the worker's services and, for that reason, resulted in the worker's discharge, provided that the worker knew or should have known that the act

or omission could jeopardize the worker's job and possibly result in discharge.

(5)(a) When a worker accepts work of a limited duration where the duration is established by the employer, or by a client of the employer in the case of a temporary service contractor, the worker is considered to have been laid off due to a lack of work, rather than to have left work, at the end of the duration agreed upon, provided that the worker's separation was due only to the completion of the work or to the expiration of the time allotted for completion of the work.

(b) When an employer employs a worker for a limited duration specified by the worker, the worker is considered to have left work, rather than to have been laid off due to a lack of work, at the end of the duration specified by the worker, provided that the worker's separation was due only to the expiration of the duration specified by the worker and that there was continuing work available in the worker's position.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-2302 and 39-51-2303, MCA

NEW RULE VII REFUSAL OF WORK (1) Pursuant to 39-51-2304(1), MCA, an individual is disqualified for benefits if the individual fails without good cause to:

(a) apply for available and suitable work when directed to do so by the employment office or the department; or

(b) accept an offer of suitable work which the individual is physically able and mentally qualified to perform; or

(c) return to customary self-employment, if any, when directed to do so by the department.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-2304, MCA

NEW RULE VIII DISQUALIFICATION WHEN UNEMPLOYMENT DUE TO STRIKE (1) For the purposes of 39-51-2305, MCA, and of this rule, the following definitions and interpretations apply:

(a) "Grade or class of workers" means:

(i) workers who are members of a particular bargaining unit; or

(ii) workers whose jobs are similar or integrated or who have substantial mutual interests or similarities in wages, hours, and other conditions of work.

(b) "labor dispute" means any controversy concerning terms, tenure, or conditions of work or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of work, regardless of whether the disputants stand in the proximate relation of employer and employee.

(c) "strike" means a concerted cessation of work by workers in an effort to obtain or to resist some change in conditions of work.

(2) A worker is considered to be participating in the labor dispute at the factory, establishment or other premises where the worker was last working that caused a strike, as provided in 39-51-2305(1), MCA, if the worker:

(a) is picketing, refusing to cross a picket line, or refusing to report for work; or

(b) is a member of a bargaining unit that voted to authorize the strike.

(3) A worker is considered to be financing the labor dispute at the factory, establishment or other premises where the worker was last working that caused a strike, as provided in 39-51-2305(1), MCA, if the worker, or the union of which the worker is a member, has contributed time or money directly or through any special assessment in an attempt to affect the outcome of the labor dispute, further the objectives of the strike, or provide aid or support to the union involved in the labor dispute or to the workers participating in the strike.

(4) A worker is considered to be directly interested in the labor dispute at the factory, establishment or other premises where the worker was last working that caused a strike, as provided in 39-51-2305(1), MCA, if:

(a) the labor dispute involves one or more of the terms or conditions of the employment agreement under which the worker was working at the time of the commencement of the strike; or

(b) the resolution of the labor dispute may reasonably be expected to affect the wages, hours, or other workers' conditions of work.

(5) The factors enumerated in (2), (3), and (4) are not exhaustive and, therefore, other circumstances not contemplated in this rule may be found by the department to constitute participation in a labor dispute or direct interest in a labor dispute or financing of a labor dispute strike by a worker, if such a finding is supported by a preponderance of the evidence and as a matter of law.

(6)(a) The department will determine that a labor dispute was caused by an employer’s violation of law pertaining to collective bargaining, as provided in 39-51-2305, MCA, if the strike that exists because of the labor dispute is found, by a state or federal agency or court with jurisdiction to make such a finding, to have been, from its inception, an unfair labor practice strike. If the strike is found to have been converted into an unfair labor practice strike, a worker disqualified pursuant to 39-51-2305(1), MCA, will remain disqualified until the end of the week during which the conversion is found to have occurred.

(b) The department will determine that a labor dispute was caused by an employer’s violation of law pertaining to hours, wages, or other conditions of work if:

(i) the strike that exists because of the labor dispute is found, by a state or federal agency or court with jurisdiction to make such a finding, to have been caused by the employer’s violation of state or federal law pertaining to hours, wages, or other conditions of work; or

(ii) the employer is found, by a state or federal agency or court with jurisdiction to make such a finding, to have violated state or federal law pertaining to collective bargaining, hours, wages, or other conditions of work and, in the absence of any finding by the agency or court as to whether the violation was

the cause of the strike, the department determines that the violation was the cause in fact and proximate cause of the strike that exists because of the labor dispute.

(7) If no violation of law is found as described under (6) above, a worker disqualified pursuant to 39-51-2305, MCA, will remain disqualified until the end of the week in which:

(a)(i) the strike is abandoned; and

(ii) the worker, or the union of which the worker is a member, makes an unconditional offer to return to work; or

(b) there has been a complete and bona fide termination of the work relationship between the worker and the employer. The permanent replacement of a striking worker will be considered to constitute a complete and bona fide severance of the work relationship between the worker and the employer only upon a final determination by a state or federal agency or court with jurisdiction to make such a determination that the worker has no rights of reinstatement.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-2305, MCA

NEW RULE IX ADMINISTRATIVE PENALTY (1) When the department obtains information that leads the department to believe that a claimant made a false statement or representation or failed to disclose a material fact in order to obtain or increase benefits, the department conducts an investigation and sends the claimant a notice detailing the information obtained during the investigation. The notice provides the claimant 10 days in which to respond to the information. If, after the claimant's response is received or the allotted time for response, including any extension of time granted by the department for good cause, has expired, the department determines that the claimant made a false statement or representation or failed to disclose a material fact in order to obtain or increase benefits, irrespective of whether or not benefits were obtained or increased as the result of the false statement or representation or failure to disclose a material fact, the claimant is sent written notification of that determination and of the number of weeks of disqualification, if any, imposed pursuant to 39-51-3201(1)(a), MCA. The claimant may appeal the determination either as to the finding that the claimant made a false statement or representation or failed to disclose a material fact in order to obtain or increase benefits or as to the number of weeks of disqualification imposed, or both.

(2)(a) A claimant will be determined to have made a false statement or representation knowing it to be false in order to obtain or increase benefits only upon a finding supported by a preponderance of the evidence that:

(i) the claimant personally made the statement or representation in question;

(ii) the claimant knew or should have known that the statement or representation was false; and

(iii) the statement or representation was made in connection with the claimant’s claim for benefits and was

material to a determination of the claimant's benefit entitlement.

(b) Any determination, redetermination, or decision finding that a claimant made a false statement or representation knowing it to be false in order to obtain or increase benefits must specifically cite the evidence in support of each conclusion reached under (2)(a)(i), (ii), and (iii).

(3)(a) A claimant will be determined to have knowingly failed to disclose a material fact in order to obtain or increase benefits only upon a finding supported by a preponderance of the evidence that:

(i) the claimant had knowledge of or should have had knowledge of the fact in question;

(ii) the fact in question was material to a determination of the claimant's benefit entitlement;

(iii) the claimant failed to disclose the fact in question; and

(iv) the claimant knew or should have known that the fact in question was required to be disclosed to the department for the proper administration of the claim.

(b) Any determination, redetermination, or decision finding that a claimant knowingly failed to disclose a material fact in order to obtain or increase benefits must specifically cite the evidence in support of each conclusion reached under (3)(a)(i), (ii), and (iii).

(4) The number of weeks of disqualification imposed pursuant to 39-51-3201(1)(a), MCA, is determined as follows:

(a) for each week relative to which a claimant has been determined to have made a false statement or representation, as provided in (2), or failed to disclose a material fact, as provided in (3), not involving a separation from work, two weeks of disqualification are imposed;

(b) for each week relative to which a claimant has been determined to have made a false statement or representation, as provided in (2), or failed to disclose a material fact, as provided in (3), involving a separation from work, 13 weeks of disqualification are imposed; and

(c) an additional four weeks of disqualification are imposed for each determination, redetermination, or decision, dated within three years of the date of the department's determination under (4)(a) or (b), that imposed a disqualification for any number of weeks pursuant to 39-51-3201(1)(a), MCA.

(5) A week is counted as a week of disqualification for the purposes of 39-51-3201(1)(a), MCA, only if:

(a) the claimant has filed a biweekly claim for the week;

(b) the claimant is otherwise eligible for and qualified to receive benefits for the week;

(c) the week has not been used to satisfy the waiting period requirement imposed by 39-51-2104(1)(c), MCA; and

(d) the maximum benefit amount for the benefit year in which the week begins, as determined in accordance with 39-51-2204, MCA, has not been exhausted.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-3201, MCA

REASON: There is reasonable necessity to adopt NEW RULE I to provide definitions that more accurately identify what certain statutory terms mean. NEW RULE I is intended to replace ARM 24.11.202, which is proposed for repeal. There is also reasonable necessity to make technical changes to the definitions as part of the revision of the claims process rules proposed for amendment and adoption in conjunction with the telephone claims system and the expected October 2000 implementation of the Department's new unemployment insurance benefits computer system, known as MISTICS.

There is reasonable necessity to adopt NEW RULE II to identify and describe the circumstances in which a person connected with a claim must perform certain acts in order to be timely in performing that act. The proposed new rule is being coordinated to occur in conjunction with the expected October 2000 implementation of the Department's new unemployment insurance benefits computer system, known as MISTICS.

There is reasonable necessity to adopt NEW RULE III to provide clarifications as to who and under what circumstances a person is entitled to notice and an opportunity to be heard concerning an issue. The Department is aware that various participants in the unemployment insurance system (including applicants and employers) are sometimes confused as to who has a right to be informed of claims-related decisions. The proposed new rule is being coordinated to occur in conjunction with the expected October 2000 implementation of the Department's new unemployment insurance benefits computer system, known as MISTICS.

There is reasonable necessity to adopt NEW RULE IV to clarify the duties and responsibilities of claimants and to provide notice to claimants and interested parties of the way in which the Department will take action on non-monetary determinations and redeterminations. NEW RULE IV is intended to replace ARM 24.11.450, which is proposed for repeal.

There is reasonable necessity to adopt NEW RULE V to clarify the duties and responsibilities of claimants and to provide notice to claimants and interested parties of the way in which the Department will take action on claims for benefits. NEW RULE V is intended to replace ARM 24.11.452, which is proposed for repeal.

There is reasonable necessity to adopt NEW RULE VI to clarify the duties and responsibilities of claimants and to provide notice to claimants and interested parties of the way in which the Department will take action on matters regarding separations from work and disciplinary suspensions from work. NEW RULE VI is intended to replace ARM 24.11.453, which is proposed for repeal.

There is reasonable necessity to adopt NEW RULE VII to identify and describe the circumstances in which a person is considered

to be disqualified from receiving benefits due to the person's refusal to accept a job offer. The proposed new rule is being coordinated to occur in conjunction with the expected October 2000 implementation of the Department's new unemployment insurance benefits computer system, known as MISTICS.

There is reasonable necessity to adopt NEW RULE VIII to clarify the duties and responsibilities of claimants and to provide notice to claimants and interested parties of the way in which the Department will take action when there is an issue of a strike by workers. NEW RULE VIII is intended to replace ARM 24.11.453, which is proposed for repeal.

There is reasonable necessity to adopt NEW RULE IX to identify and describe the circumstances in which the Department will impose the administrative penalty provided for by 39-51-3201, MCA. The proposed new rule is being coordinated to occur in conjunction with the expected October 2000 implementation of the Department's new unemployment insurance benefits computer system, known as MISTICS.

5. The Department proposes to repeal the following rules:

24.11.102 GENERAL DUTIES AND RESPONSIBILITIES OF THE DIVISION
AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-102, MCA
ARM pages 24-613 and 24-614

24.11.202 DEFINITIONS
AUTH: 39-51-301, 39-51-302, MCA
IMP: Title 39, chapter 51, MCA
ARM pages 24-615 through 24-616

24.11.450 NON-MONETARY DETERMINATIONS AND REDETERMINATIONS--NOTICE
AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2301 through 2304, MCA
ARM pages 24-639 and 24-640

24.11.452 ABLE, AVAILABLE, AND ACTIVELY SEEKING WORK
AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2104, 39-51-2304, MCA
ARM page 24-641

24.11.453 VOLUNTARY AND INVOLUNTARY SEPARATIONS FROM EMPLOYMENT
AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2104, 39-51-2302, and 39-51-2303, MCA
ARM pages 24-641 and 24-642

24.11.454 LEAVES OF ABSENCE--DISCIPLINARY SUSPENSIONS
AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2104, MCA

ARM pages 24-642 and 24-643

24.11.465 DISQUALIFICATION WHEN UNEMPLOYMENT DUE TO STRIKE

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2305, MCA
ARM pages 24-648 and 24-649

REASON: There is reasonable necessity to repeal those rules proposed for repeal because the Department intends to replace those rules with proposed new rules, or, in the case of ARM 24.11.102, with proposed amendments to ARM 24.11.101, all as part of the updating of terminology used in the rules. The proposed repeals are being coordinated to occur in conjunction with the expected October 2000 implementation of the Department's new unemployment insurance benefits computer system, known as MISTICS.

6. Interested 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:

Roy Mulvaney
Benefits Bureau
Unemployment Insurance Division
Department of Labor and Industry
P.O. Box 8020
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., August 29, 2000. Comments may also be submitted electronically as noted in the following paragraph.

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://dli.state.mt.us/calendar.htm, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, http://forums.dli.state.mt.us, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., August 29, 2000. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

8. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the

mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the Department has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

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

10. The Department proposes to make the amendments, new rules and repeals effective October 1, 2000. The Department reserves the right to adopt only portions of the proposed amendments, new rules or repeals, or to adopt some or all of the proposed amendments, new rules or repeals at a later date.

11. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ PATRICIA HAFFEY
Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: July 17, 2000.

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

In the matter of the adoption of Rule I; the amendment of ARM 16.28.101, 16.28.201, 16.28.202, 16.28.203, 16.28.204, 16.28.305, 16.28.306, 16.28.307, 16.28.601, 16.28.605D, 16.28.606C, 16.28.607, 16.28.608A, 16.28.609A, 16.28.610A, 16.28.610B, 16.28.612, 16.28.616A, 16.28.616C, 16.28.623, 16.28.624, 16.28.625, 16.28.626A, 16.28.628A, 16.28.629, 16.28.630, 16.28.632C, 16.28.632D, 16.28.638B and 16.28.1001 pertaining to communicable disease control	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On August 17, 2000, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on August 7, 2000, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

<u>RULE I LEAD POISONING: ELEVATED BLOOD LEAD LEVELS IN CHILDREN</u> (1) When an elevated capillary test of a child aged 13 or under shows an elevated blood lead level (EBL) greater than or equal to 10 micrograms per deciliter (ug/dl), the health care provider who ordered the capillary test must confirm the results as soon as possible by a venous draw.

(2) In the case of an elevated venous level, the health care provider must retest the blood lead level at intervals

recommended by the federal centers for disease control and prevention, until two consecutive tests taken at least two months apart show a level of less than 10 ug/dl.

(3) The department hereby adopts and incorporates by reference the recommendations for blood lead testing intervals for children with elevated venous levels published in November 1997 by the federal centers for disease control and prevention (CDC) and contained in CDC's manual "Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials," which contains guidance for identifying children with dangerous blood lead levels and intervening to protect them. A copy of the manual is available from the Centers for Disease Control, MASO Publications Distribution Facility, 5665 New Peachtree Road (PO7), Atlanta, GA 30341.

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

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

16.28.101 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this chapter:

(1) "Blood and body fluid precautions" mean the following requirements to prevent spread of disease through contact with infective blood or body fluids:

(a) through (g) remain the same.

(h) A case must be restricted to a private room if ~~his/her~~ the case's hygiene is poor, i.e., ~~s/he~~ the case does not wash hands after touching infective material, contaminates the environment with infective material, or shares contaminated articles with other individuals who as yet have not contracted the disease in question; such a person may share a room with anyone else infected with the same organism.

(i) through (2) remain the same.

(3) "Case" means a person who is confirmed or suspected to have a reportable disease or condition.

(4) through (9) remain the same.

(10) "Drainage and secretion precautions" mean the following requirements to prevent spread of disease through contact with purulent material from an infected body site:

(a) and (b) remain the same.

(c) Anyone touching the case or potentially contaminated articles must wash ~~his/her~~ their hands immediately afterward and before touching another person.

(d) remains the same.

(11) "Enteric precautions" mean the following requirements to prevent spread of disease through feces:

(a) through (d) remain the same.

(e) A case must be restricted to a private room if ~~his/her~~ the case's hygiene is poor, i.e., ~~s/he~~ the case does not wash hands after touching infective material, contaminates the environment with infective material, or shares contaminated

articles with other individuals who as yet have not contracted the disease in question; such a person may share a room with anyone else infected with the same organism.

~~(12) "Epidemic" is an incidence of a disease or infection significantly exceeding the incidence normally observed in a specified population of people over a specific period of time. An "outbreak" is the same as an "epidemic".~~

(13) through (22) remain the same but are renumbered (12) through (21).

~~(23)~~ (22) "Isolation" means separation during the period of communicability of an infected or probably infected person from other persons, in places and under conditions approved by the department or local health officer and preventing the direct or indirect conveyance of the infectious agent to persons who are susceptible to the infectious agent in question or who may convey the infection to others. Isolation may be either modified or strict, as defined below:

(a) "Modified isolation" means instruction by either the department, a local health officer, or an attending physician, directed to the infected person, any members of ~~his/her~~ that person's family, and any other close contacts, in accordance with "Guideline~~s~~ for Isolation Precautions in Hospitals" published by the Government Printing Office, ~~July, 1983~~ published in 1996, setting restrictions on the movements of and contacts with the infected person and specifying whichever of the following are also appropriate:

(i) through (b)(ii) remain the same.

(iii) Each person caring for an infected person must wear a washable outer garment, mask, and gloves, and must thoroughly wash ~~his/her~~ their own hands with soap and hot water after handling an infected person or an object an infected person may have contaminated. Before leaving the room of an infected person, a person caring for an infected person must remove the washable outer garment and hang it in the infected person's room until the garment and room are disinfected.

(iv) and (v) remain the same.

(24) remains the same but is renumbered (23).

(24) "Outbreak" means an incidence of a disease or infection significantly exceeding the incidence normally observed in a population of people over a period of time specific to the disease or infection in question.

(25) remains the same.

(26) "Potential epidemic outbreak" means the presence or suspected presence of a communicable disease in a population where the number of susceptible persons and the mode of transmission of the disease may cause further spread of that disease.

(27) and (28) remain the same.

(29) "Respiratory isolation" means:

(a) and (b) remain the same.

(c) any person caring for the patient must thoroughly wash ~~his/her~~ their hands after touching the patient or contaminated articles and before touching another person; and

(d) remains the same.

(30) "Sensitive occupation" means employment in direct care of children, the elderly, or individuals who are otherwise at a high risk for disease or where disease spread could occur due to the nature of ~~his/her~~ the work.

(31) "Sexually transmitted disease" means human immunodeficiency virus (HIV) infection, syphilis, ~~gonococcal infection~~ gonorrhea, chancroid, lymphogranuloma venereum, granuloma inguinale, or chlamydial genital infections.

(32) and (33) remain the same.

(34) "Tuberculosis isolation" means:

(a) and (b) remain the same.

(c) any person caring for the patient must wash ~~his/her~~ their hands after touching the patient or potentially contaminated articles and before touching another person; and

(d) remains the same.

(35) The department hereby adopts and incorporates by reference the "Guideline~~s~~ for Isolation Precautions in Hospitals" published by the Government Printing Office ~~July, 1983~~ in 1996, which specifies precautions that should be taken to prevent transmission of communicable diseases. A copy of the "Guideline~~s~~" may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161 (phone 703-487-4650). Any orders should refer to the publication number PB96138102 for the Guideline for Isolation Precautions in Hospitals (1996).

AUTH: Sec. 50-1-202, 50-2-116 and 50-17-103, MCA
IMP: Sec. 50-1-202, 50-17-103 and 50-18-101, MCA

16.28.201 REPORTERS (1) With the exception noted in (3) below, any ~~Any~~ person, including but not limited to a physician, dentist, nurse, medical examiner, other health care practitioner, administrator of a health care facility, public or private school administrator, city health officer, or laboratorian who knows or has reason to believe that a case exists shall immediately report:

(a) to the department alone in the case of acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection, the following information, ~~specified in ARM 16.28.204(2) to the department alone, in the case of HIV infection;~~ if available:

(i) name and age of the case;

(ii) whether or not the case is suspected or confirmed;

(iii) name and address of the case's physician; and

(iv) name of the reporter or other person the department can contact for pertinent information about the case;

(b) the information specified in ARM 16.28.204(1)(a) ~~-~~ through (e) to the county, city-county, or district health officer in every case other than ~~those listed in ARM 16.28.203(3)~~ a case of AIDS, HIV infection, Colorado tick fever, or influenza; or

(c) if the disease in question is ~~listed in ARM 16.28.203(3)~~ Colorado tick fever or influenza, the fact that a case has occurred to the county, city-county, or district health

officer.

(2) A county, city-county, or district health officer must submit to the department, on the schedule noted in ARM 16.28.203, the information specified in ARM 16.28.204 concerning each confirmed or suspected case of which ~~s/he~~ the officer is informed.

~~(3) A laboratorian performing a blood test which shows the presence of the antibody to the human immunodeficiency virus (HIV) must submit to the department, in addition to the report required by ARM 16.28.203(4), the report required by ARM 16.28.203(6) as well.~~

(3) A state funded anonymous testing site for HIV infection is not subject to the reporting requirement in (1)(a) above.

AUTH: Sec. 50-1-202, 50-17-103 and 50-18-105, MCA
IMP: Sec. 50-1-202, 50-2-118, 50-17-103, 50-18-102 and 50-18-106, MCA

16.28.202 REPORTABLE DISEASES AND CONDITIONS (1) The following communicable diseases and conditions are reportable:

(a) ~~Acquired immune deficiency syndrome (AIDS)~~, as defined by the centers for disease control, or HIV infection, ~~as indicated by the presence of the human immunodeficiency virus antibody~~ as determined by a positive result from a test approved by the federal food and drug administration for the detection of HIV, including but not limited to antibody, antigen, or HIV nucleic acid tests;

(b) Amebiasis;
(c) Anthrax;
(d) Botulism (including infant botulism);
(e) Brucellosis;
(f) Campylobacter enteritis;
(g) Chancroid;
(h) Chlamydial genital infection;
(i) Cholera;
(j) Colorado tick fever;
(k) Cryptosporidiosis;
(l) Cytomegaloviral illness;
(m) Diarrheal disease outbreak;
(n) Diphtheria;
(o) Encephalitis;
(p) Escherichia coli 0157:H7 enteritis;
(q) Gastroenteritis ~~epidemic~~ outbreak;
(r) Giardiasis;
(s) Gonococcal infection;
(t) Gonococcal ophthalmia neonatorum;
(u) Granuloma inguinale;
(v) Haemophilus influenzae B invasive disease (meningitis, epiglottitis, pneumonia, and septicemia);
(w) Hansen's disease (leprosy);
(x) Hantavirus pulmonary syndrome;
(y) Hemolytic uremic syndrome;
(z) Hepatitis A, B, or non-A non-B;
(aa) Kawasaki disease;

(ab) Influenza;

(ac) Lead poisoning (levels ≥ 10 micrograms per deciliter);

~~(ac)~~ (ad) Legionellosis;

~~(ad)~~ (ae) Listeriosis;

~~(ae)~~ (af) Lyme disease;

~~(af)~~ (ag) Lymphogranuloma venereum;

~~(ag)~~ (ah) Malaria;

~~(ah)~~ (ai) Measles (rubeola);

~~(ai)~~ (aj) Meningitis, bacterial or viral;

~~(aj)~~ (ak) Mumps;

~~(ak)~~ (al) Ornithosis (psittacosis);

~~(al)~~ (am) Pertussis (whooping cough);

~~(am)~~ (an) Plague;

~~(an)~~ (ao) Poliomyelitis, paralytic or non-paralytic;

~~(ao)~~ (ap) Q-fever;

~~(ap)~~ (aq) Rabies or rabies exposure (human);

~~(aq)~~ (ar) Reye's syndrome;

~~(ar)~~ (as) Rocky Mountain spotted fever;

~~(as)~~ (at) Rubella (including congenital);

~~(at)~~ (au) Salmonellosis;

~~(au)~~ (av) Shigellosis;

~~(av)~~ (aw) Streptococcus pneumoniae invasive disease, drug resistant;

~~(aw)~~ (ax) Syphilis;

~~(ax)~~ (ay) Tetanus;

~~(ay)~~ (az) Trichinosis;

~~(az)~~ (ba) Tuberculosis;

~~(ba)~~ (bb) Tularemia;

~~(bb)~~ (bc) Typhoid fever;

~~(bc)~~ (bd) Yellow fever;

~~(bd)~~ (be) Yersiniosis;

~~(be)~~ (bf) Illness occurring in a traveler from a foreign country;

~~(bf)~~ (bg) An ~~unusual outbreak~~ occurrence in a community or region of a case or cases of any communicable disease in the "Control of Communicable Diseases ~~in Man~~ Manual, An Official Report of the American Public Health Association", ~~15th Edition, 1990~~ 17th edition, 2000, with a frequency in excess of normal expectancy~~.~~ ; and

(bh) Any unusual incident of unexplained illness or death in a human or animal.

(2) The department hereby adopts and incorporates by reference the "Control of Communicable Diseases ~~in Man~~ Manual, An Official Report of the American Public Health Association", ~~15th edition, 1990~~ 17th edition, 2000, which lists and specifies control measures for communicable diseases. A copy of the "Control of Communicable Diseases ~~in Man"~~ Manual" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.

AUTH: Sec. 50-1-202, 50-2-118, 50-18-105 and 50-18-106, MCA
IMP: Sec. 50-1-202, 50-2-118, 50-17-103, 50-18-102 and

50-18-106, MCA

16.28.203 REPORTS AND REPORT DEADLINES (1) A county, city-county, or district health officer or the officer's authorized representative must immediately report to the department by telephone the information cited in ARM 16.28.204(1) whenever a case of one of the following diseases is suspected or confirmed:

(a) Anthrax;

(b) Botulism (including infant botulism);

(c) Diphtheria;

(d) Measles (rubeola);

(e) Plague;

(f) Rabies or rabies exposure (human);

(g) Typhoid fever; or

(h) Any unusual incident of unexplained illness or death in a human or animal.

(2) A county, city-county, or district health officer or the officer's authorized representative must mail to the department the information required by ARM 16.28.204(1) for each suspected or confirmed case of one of the following diseases, within the time limit noted for each:

(a) On the same day information about a case of one of the following diseases is received by the county, city-county, or district health officer:

(i) Chancroid;

(ii) Cholera;

(iii) Diarrheal disease outbreak;

(iv) Escherichia coli 0157:H7 enteritis;

(v) Gastroenteritis ~~epidemic~~ outbreak;

(vi) Gonococcal infection;

(vii) Gonococcal ophthalmia neonatorum;

(viii) Granuloma inguinale;

(ix) Haemophilus influenzae B invasive disease (meningitis, epiglottitis, pneumonia, and septicemia);

(x) Hantavirus pulmonary syndrome;

(xi) Hemolytic uremic syndrome;

(xii) Listeriosis;

(xiii) Lymphogranuloma venereum;

(xiv) Meningitis, bacterial or viral;

(xv) Pertussis (whooping cough);

(xvi) Poliomyelitis, paralytic or non-paralytic;

(xvii) Rubella (including congenital);

(xviii) Syphilis;

(xix) Tetanus;

(xx) Yellow fever;

(xxi) Illness occurring in a traveler from a foreign country; and

(xxii) An ~~unusual outbreak~~ occurrence in a community or region of a case or cases of any communicable disease in the "Control of Communicable Diseases ~~in Man~~ Manual, An Official Report of the American Public Health Association", ~~15th Edition, 1990~~ 17th edition, 2000 with a frequency in excess of normal expectancy.

(b) Within 7 calendar days after the date information about a case of one of the following diseases is received by the county, city-county, or district health officer:

~~(i) Acquired immune deficiency syndrome (AIDS)~~

~~(ii)~~ (i) Amebiasis;

~~(iii)~~ (ii) Brucellosis;

~~(iv)~~ (iii) Campylobacter enteritis;

~~(v)~~ (iv) Chlamydial genital infection;

~~(vi)~~ (v) Cryptosporidiosis;

~~(vii)~~ (vi) Cytomegaloviral illness;

~~(viii)~~ (vii) Encephalitis;

~~(ix)~~ (viii) Giardiasis;

~~(x)~~ (ix) Hansen's disease (leprosy);

~~(xi)~~ (x) Hepatitis, A, B, or non-A non-B;

~~(xii)~~ (xi) Kawasaki disease;

(xii) Lead poisoning (levels ≥ 10 micrograms per deciliter);

(xiii) Legionellosis;

(xiv) Lyme disease;

(xv) Malaria;

(xvi) Mumps;

(xvii) Ornithosis (Psittacosis);

(xviii) Q-fever;

(xix) Reye's syndrome;

(xx) Rocky Mountain spotted fever;

(xxi) Salmonellosis;

(xxii) Shigellosis;

(xxiii) Streptococcus pneumoniae invasive disease, drug resistant;

(xxiv) Trichinosis;

(xxv) Tuberculosis;

(xxvi) Tularemia; or

(xxvii) Yersiniosis.

(3) By Friday of each week during which a suspected or confirmed case of one of the diseases listed below is reported to the county, city-county, or district health officer, that officer or the officer's authorized representative must mail to the department the total number of the cases of each such disease reported that week:

(a) Colorado tick fever; and

(b) Influenza.

~~(4) Anyone, other than the local health officer, who reports a case of AIDS or HIV infection must submit the report by 5:00 p.m. Friday of the week in which the diagnosis of AIDS is made or the test showing HIV infection is performed.~~

(4) Whenever a laboratory performs a blood lead analysis, a laboratorian employed at that laboratory must submit to the department, by the 15th day following the month in which the test was performed, a copy of all blood lead analyses performed that month, including analyses in which lead was undetectable.

(5) remains the same.

~~(6) A laboratorian in a laboratory in which a test of blood is made to determine whether the antibody to the human immunodeficiency virus (HIV) is present must submit to the~~

~~department by the 15th day following the month in which the test was performed a report on a form supplied by the department indicating the number of tests with negative results for that antibody which were done during that month.~~

~~(7)~~ (6) The department hereby adopts and incorporates by reference the "Control of Communicable Diseases ~~in Man~~ Manual, An Official Report of the American Public Health Association", ~~15th edition, 1990~~ 17th edition, 2000, which lists and specifies control measures for communicable diseases. A copy of the "Control of Communicable Diseases ~~in Man"~~ Manual" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.

AUTH: Sec. 50-1-202, 50-17-103 and 50-18-105, MCA
IMP: Sec. 50-1-202, 50-17-103, 50-18-102 and 50-18-106, MCA

16.28.204 REPORT CONTENTS (1) A report of a case of reportable disease or a condition which is required by ARM 16.28.203(1) or (2) must include, if available:

(a) name and age of the case;

(b) dates of onset of the disease or condition and the date the disease or condition was reported to the health officer;

(c) remains the same.

(d) name and address of the case's physician; and

(e) name of the reporter or other person the department can contact for further information regarding the case.

~~(2) A report of HIV infection must include:~~

~~(a) the date the test identifying the antibody was performed, if it is available to the reporter;~~

~~(b) the name and address of the reporter; and~~

~~(c) the initials of the person tested or any other identifier, such as a number, assigned by the reporter which does not reveal the name of the person tested.~~

~~(3)~~ (2) The information required by (1) ~~and (2)~~ of this rule must be supplemented by any other information in the possession of the reporter which the department requests and which is related to case management~~, excepting, in the case of those who are HIV-positive, the name or any other information from which the individual in question might be identified~~ and/or investigation of the case.

(3) Within 30 days of receiving a completed report of a case with HIV infection or AIDS, the department will:

(a) remove the name, street address, and any other information that could be used to identify the case from all reports, both paper and electronic;

(b) generate a number-based unique identifier for the case to be used internally by the department; and

(c) contact the local health officer of the county where the case resides or the officer's designee to give the officer or designee information about the case and the need for further investigation and/or follow-up.

(4) The laboratory reports required by ARM 16.28.203(5)

~~and (6)~~ and the numerical report required by ARM 16.28.203(3) need contain only the information specified in those sections.

(5) The name and/or unique identifier of any case ~~of AIDS or HIV infection~~ with a reportable disease or condition and the name and address of the reporter of any such case are confidential and not open to public inspection.

AUTH: Sec. 50-1-202, 50-17-103 and 50-18-105, MCA
IMP: Sec. 50-1-202, 50-17-103, 50-18-102 and 50-18-106, MCA

16.28.305 CONFIRMATION OF DISEASE (1)~~(a)~~ Subject to the limitation in ~~(b)~~ (2) below, if a local health officer receives information about a case of any of the following diseases, the officer or the officer's authorized representative must ensure that a specimen from the case is submitted to the department, which specimen will be analyzed to confirm the existence or absence of the disease in question:

~~(i)~~ (a) Anthrax;
~~(ii)~~ (b) Botulism (foodborne);
(iii) (c) Brucellosis;
(iv) (d) Cholera;
(v) (e) Diarrheal disease ~~epidemic~~ outbreak;
(vi) (f) Diphtheria;
(vii) (g) Hantavirus pulmonary syndrome;
(viii) (h) Human immunodeficiency virus (HIV);
(ix) (i) Influenza;
(x) (j) Measles (rubeola);
(xi) (k) Pertussis (whooping cough);
(xii) (l) Plague;
(xiii) (m) Polio, paralytic or non-paralytic;
(xiv) (n) Rabies (human);
(xv) (o) Rubella (including congenital);
(xvi) (p) Syphilis;
(xvii) (q) Trichinosis;
(xviii) (r) Tuberculosis; and
(xix) (s) Typhoid fever.

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

~~(2)~~ (3) A laboratorian or any other person in possession of a specimen from a case of a disease listed in (1)(a) through (s) above must submit it to the local health officer upon request.

~~(3)~~ (4) If no specimen from the case is otherwise available and the case refuses to allow a specimen to be taken for purposes of (1), the case will be assumed to be infected and must comply with whatever control measures are imposed by the department or local health officer.

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

16.28.306 INVESTIGATION OF A CASE (1) Immediately after being notified of a case or an ~~epidemic~~ outbreak of a reportable disease, a local health officer or the officer's designee must:

(a) remains the same.

(b) if ~~s/he~~ the officer or designee finds that the nature of the disease and the circumstances of the case or ~~epidemic~~ outbreak warrant such action:

(i) and (ii) remain the same.

(iii) take appropriate steps, as outlined in the ~~APHA publication~~ the "Control of Communicable Diseases ~~in Man~~ Manual, An Official Report of the American Public Health Association", ~~15th edition, 1990~~ 17th edition, 2000, to prevent or control the spread of disease; and

(iv) remains the same.

(c) whenever the identified source of a reportable disease or a person infected or exposed to a reportable disease who should be quarantined or placed under surveillance is located outside of ~~his/her~~ the jurisdiction of the officer or the officer's designee:

(i) and (ii) remain the same.

(2) The department hereby adopts and incorporates by reference the "Control of Communicable Diseases ~~in Man~~ Manual, An Official Report of the American Public Health Association", ~~15th edition, 1990~~ 17th edition, 2000, which specifies control measures for communicable diseases. A copy of the report may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.

AUTH: Sec. 50-1-202, 50-2-118, 50-17-103 and 50-18-105, MCA
IMP: Sec. 50-1-202, 50-2-118, 50-17-103, 50-17-105, 50-18-102, 50-18-107 and 50-18-108, MCA

16.28.307 POTENTIAL ~~EPIDEMICS~~ OUTBREAKS (1) Whenever a disease listed in ARM 16.28.203(1) is confirmed or whenever any other communicable disease listed in the "Control of Communicable Diseases ~~in Man~~ Manual, An Official Report of the American Public Health Association", ~~15th edition, 1990~~ 17th edition, 2000, or other communicable disease which constitutes a threat to the health of the public becomes so prevalent as to endanger an area outside of the jurisdiction where it first occurred, the local health officer of the jurisdictional area in which the disease occurs must notify the department and cooperate with the department's epidemiologist or ~~his/her~~ the epidemiologist's representative to control the spread of the disease in question.

(2) The department hereby adopts and incorporates by reference the "Control of Communicable Diseases ~~in Man~~ Manual, An Official Report of the American Public Health Association", ~~15th edition, 1990~~ 17th edition, 2000, which lists and specifies control measures for communicable diseases. A copy of the "Control of Communicable Diseases ~~in Man"~~ Manual" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.601 MINIMAL CONTROL MEASURES (1) This subchapter contains minimal control measures to prevent the spread of disease. ~~which must be employed by a~~ The local health officer or the officer's designee must either employ the minimal control measures or ensure that~~,~~ a representative of the department when assisting a local health officer with a case, a health care provider treating a person with a reportable disease, or any other person caring for a person with a reportable disease does so, with the exception that if a particular control measure specifies who is responsible for carrying it out, only that person is responsible.

(2) remains the same.

AUTH: Sec. 50-1-202, 50-2-116 and 50-2-118, MCA
IMP: Sec. 50-1-202, 50-2-116 and 50-2-118, MCA

16.28.605D CHLAMYDIAL GENITAL INFECTION (1) remains the same.

(2) An individual who contracts the infection must be interviewed by the local health officer or the officer's designee to determine the person's sexual contacts, and those contacts must ~~be examined and must receive the~~ be provided with appropriate medical treatment ~~indicated by clinical or laboratory findings~~.

(3) remains the same.

AUTH: Sec. 50-1-202, 50-2-118 and 50-18-105, MCA
IMP: Sec. 50-1-202, 50-2-118, 50-18-102 and 50-18-107, MCA

16.28.606C DIARRHEAL DISEASE OUTBREAK (1) remains the same.

(2) Enteric precautions must be imposed until laboratory tests determine the etiologic agent involved, after which control measures must be imposed which are appropriate for that agent and set out in the "Control of Communicable Diseases ~~in Man~~ Manual, An Official Report of the American Public Health Association", ~~15th Edition, 1990~~ 17th edition, 2000.

(3) The department hereby adopts and incorporates by reference the "Control of Communicable Diseases ~~in Man~~ Manual, An Official Report of the American Public Health Association", ~~15th Edition, 1990~~ 17th edition, 2000, which lists and specifies control measures for communicable diseases. A copy of the "Control of Communicable Diseases ~~in Man"~~ Manual" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.

AUTH: Sec. 50-1-202 and 50-2-118, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.607 DIPHTHERIA (1) For a confirmed case of diphtheria, strict isolation of an infected person must be imposed until ~~2~~ two cultures, taken not less than 24 hours apart and not less than 24 hours after cessation of antimicrobial

therapy, from nose and throat fail to show diphtheria bacilli, except that upon clinical recovery and when appropriate antibiotics have been used as therapy, respiratory isolation may be imposed instead of strict isolation, ending 14 days after the date administration of antibiotics commenced.

(2) All household contacts must be placed under quarantine by the local health officer until their nose and throat cultures are negative.

(3) remains the same.

(4) A contact in a sensitive occupation must be excluded by the local health officer or the officer's designee from work until ~~s/he~~ the contact is determined not to be a carrier.

(5) remains the same.

AUTH: Sec. 50-1-202 and 50-2-118, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.608A GASTROENTERITIS EPIDEMIC OUTBREAK (1) remains the same.

AUTH: Sec. 50-1-202 and 50-2-118, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.609A ~~GONOCOCCAL INFECTION~~ GONORRHEA (1) A person who contracts genital ~~gonococcal infection~~ gonorrhea must be directed to undergo appropriate antibiotic therapy and to avoid sexual contact until ~~seven~~ 7 days have elapsed since the commencement of effective treatment prescribed by the centers for disease control and prevention in the 1998 guidelines for treatment of sexually transmitted diseases. Individuals who have contracted genital ~~gonococcal infection~~ gonorrhea must also be treated for chlamydia.

(2) The local health officer or the officer's designee must interview an ~~An~~ individual who contracts the infection ~~must be interviewed~~ in order to determine the person's sexual contacts, and must ensure that those contacts ~~must be~~ are examined and ~~must~~ receive the medical treatment indicated by clinical or laboratory findings.

(3) remains the same.

AUTH: Sec. 50-1-202, 50-2-118 and 50-18-105, MCA
IMP: Sec. 50-1-202, 50-2-118, 50-18-102 and 50-18-107, MCA

16.28.610A GRANULOMA INGUINALE (1) remains the same.

(2) ~~Examination and epidemiological treatment of sexual contacts is recommended.~~ The local health officer or the officer's designee must identify and treat sexual contacts.

AUTH: Sec. 50-1-202, 50-2-118 and 50-18-105, MCA
IMP: Sec. 50-1-202, 50-2-118 and 50-18-102, MCA

16.28.610B HAEMOPHILUS INFLUENZA B INVASIVE DISEASE

(1) Contacts must be identified by the local health

officer or the officer's designee in order to determine if chemoprophylaxis is advisable.

AUTH: Sec. 50-1-202 and 50-2-118, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.612 HEPATITIS TYPE B (1) and (a) remain the same.

(b) ~~Contacts must be identified and advised~~ The local health officer or the officer's designee must identify contacts and advise them how to prevent acquisition of the disease, given the nature of their relationship to the case.

AUTH: Sec. 50-1-202 and 50-2-118, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.616A LISTERIOSIS ~~EPIDEMIC~~ OUTBREAK

(1) ~~Surveillance of contacts must be conducted and identification of the disease source attempted.~~ The local health officer or the officer's designee must conduct surveillance of contacts and attempt to identify the disease source.

AUTH: Sec. 50-1-202 and 50-2-118, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.616C LYMPHOGRANULOMA VENEREUM (1) remains the same.

(2) An individual who contracts the disease must be interviewed by the local health officer or the officer's designee to determine who ~~his/her~~ that individual's contacts are, and the local health officer must ensure that those contacts ~~should be~~ are examined and receive the medical treatment indicated by clinical and laboratory findings.

AUTH: Sec. 50-1-202, 50-2-118 and 50-18-105, MCA
IMP: Sec. 50-1-202, 50-2-118 and 50-18-102, MCA

16.28.623 PERTUSSIS (WHOOPING COUGH) (1) Modified isolation consisting of respiratory isolation must be imposed upon a case of pertussis for ~~7~~ 5 days after the start of antibiotic therapy, or 21 days after the date of onset of symptoms if no antibiotic therapy is given.

(2) ~~Children exposed to pertussis who have no history of adequate immunization must be quarantined.~~ An individual identified by the local health officer as a close contact must be referred by the officer to a physician for chemoprophylaxis.

(3) A person identified by the local health officer or the officer's designee as a close contact must be monitored by the local health officer or the officer's designee for respiratory symptoms for 20 days after the person's last contact with the case.

(4) If a close contact shows respiratory symptoms consistent with pertussis, the health officer or the officer's designee must order the contact to avoid contact with anyone outside of the contact's immediate family until a medical

evaluation indicates that the contact is not developing pertussis.

~~(3)~~ (5) Surveillance for susceptible contacts must be initiated immediately by the local health officer or the officer's designee and immediate immunizations recommended by the officer or designee must be administered to identified susceptible contacts.

AUTH: Sec. 50-1-202 and 50-2-118, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.624 PLAGUE (1) and (a) remain the same.

(b) those who are identified by the local health officer or the officer's designee as having ~~have~~ been in household or face-to-face contact with the case must be placed on chemoprophylaxis and kept under surveillance by the local health officer or the officer's designee for 7 days, or, if they refuse chemoprophylaxis, be kept in strict isolation with careful surveillance for 7 days.

(2) and (3) remain the same.

(4) An investigation must be conducted by the local health officer or the officer's designee to identify vectors and reservoirs whenever a case of bubonic plague exists.

AUTH: Sec. 50-1-202 and 50-2-118, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.625 POLIOMYELITIS (1) remains the same.

(2) ~~Surveillance~~ The local health officer or the officer's designee must initiate surveillance for susceptible contacts ~~must be initiated~~ and recommend immunization ~~recommended~~ to them immediately.

AUTH: Sec. 50-1-202 and 50-2-118, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.626A RABIES EXPOSURE (1) The following actions must be reported to the local health officer if they are committed by an animal other than a rabbit, hare, or rodent whose species can be infected with rabies ~~and that is not satisfactorily vaccinated against rabies as specified in ARM 32.3.1205~~:

(a) through (2) remain the same.

(3) As soon as possible after ~~receiving~~ investigating a report of possible rabies exposure, the local health officer must inform the exposed person or the individual responsible for ~~that~~ the exposed person if ~~s/he~~ that person is a minor whether or not treatment is ~~necessary~~ recommended to prevent rabies and provide a referral to a health care provider.

(4) Whenever the circumstances described in (1) ~~occur~~ involve a dog, cat, or ferret, the local health officer must either: ~~isolate the animal in question for at least 10 days for observation at a pound, veterinary facility, or other adequate facility, or, if the symptoms described in (1)(b)(i), (ii), and~~

~~(iii) above exist, order the animal killed and the head sent to the department of livestock's diagnostic laboratory at Bozeman for rabies analysis. The local health officer may also order an animal killed subsequent to isolation, and the brain analyzed.~~

(a) arrange for the animal to be observed for signs of illness during a 10 day quarantine period at an animal shelter, veterinary facility, or other adequate facility, and ensure that any illness in the animal during the confinement or before release is evaluated by a veterinarian for signs suggestive of rabies; or

(b) if the symptoms described in (1)(b) above exist, order the animal killed and the head sent to the department of livestock's diagnostic laboratory at Bozeman for rabies analysis. The local health officer may also order an animal killed subsequent to isolation, and the brain analyzed.

(5) and (6) remain the same.

AUTH: Sec. 50-1-202 and 50-2-118, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.628A RUBELLA (1) Whenever necessary to protect a susceptible pregnant woman or to control an ~~epidemic~~ outbreak, isolation must be imposed on a case of rubella for 4 days after the onset of rash.

AUTH: Sec. 50-1-202 and 50-2-118, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.629 RUBELLA ~~--~~ : CONGENITAL (1) remains the same.

(2) ~~Any~~ The local health officer or the officer's designee must identify any susceptible contact of the person with congenital rubella ~~must be identified~~, to the extent possible, and ~~encouraged~~ encourage them to undergo rubella immunization if not already immune.

AUTH: Sec. 50-1-202 and 50-2-118, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.630 SALMONELLOSIS (OTHER THAN TYPHOID FEVER)

(1) remains the same.

(2) Whenever a case of ~~S~~salmonellosis exists:

(a) remains the same.

(b) the local health officer or the officer's designee must prohibit the case ~~must not be allowed to engage~~ from engaging in a sensitive occupation until ~~2~~ two successive specimens of the case's feces have been determined by a laboratory to be negative for Salmonella organisms, the first specimen of which is collected at least 48 hours after cessation of the therapy and the second not less than 24 hours thereafter; and

(c) stool cultures must be made for any family contacts of a case who are identified by the local health officer or the officer's designee and who are themselves involved in a sensitive occupation; if the culture is positive for Salmonella,

the contact is subject to the requirements of (2)(a) and (b) above.

AUTH: Sec. 50-1-202 and 50-2-118, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.632C SYPHILIS (1) A person with a case of infectious syphilis must be instructed to refrain from activities in which body fluids are shared (such as sexual intercourse) until 48 hours after effective treatment has been commenced and must either receive treatment or be isolated until ~~s/he does~~ treatment is received.

(2) A person with syphilis must be interviewed by the local health officer or the officer's designee to identify the following types of contacts, depending upon the disease stage in question:

(a) through (3) remain the same.

AUTH: Sec. 50-1-202, 50-2-118 and 50-18-105, MCA
IMP: Sec. 50-1-202, 50-2-118, 50-18-102 and 50-18-107, MCA

16.28.632D STREPTOCOCCUS PNEUMONIAE INVASIVE DISEASE, DRUG RESISTANT (1) through (b) remain the same.

(2) ~~Surveillance~~ The local health officer or the officer's designee must initiate surveillance for susceptible contacts ~~must be initiated~~ and recommend immediate immunizations ~~recommended~~ to those identified as high risk for pneumococcal disease, including persons aged 2 years or older with sickle cell disease; functional or anatomic asplenia; nephrotic syndrome or chronic renal failure; immunosuppression, including HIV infection; organ transplantation or cytoreducation therapy; other chronic illnesses; and all persons aged 65 years or older.

(3) remains the same.

(4) ~~Epidemics~~ Outbreaks or clusters of cases may warrant more liberal use of the pneumococcal vaccine or chemoprophylaxis after consultation with the department.

(5) remains the same.

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

16.28.638B ILLNESS IN TRAVELER FROM FOREIGN COUNTRY

(1) Isolation and quarantine must be imposed until the etiologic agent of the disease is determined, at which point control measures must be imposed which are prescribed for that etiologic agent in the "Control of Communicable Diseases ~~in Man~~ Manual, An Official Report of the American Public Health Association", ~~15th edition, 1990~~ 17th edition, 2000.

(2) The department hereby adopts and incorporates by reference the "Control of Communicable Diseases ~~in Man~~ Manual, An Official Report of the American Public Health Association", ~~15th edition, 1990~~ 17th edition, 2000, which lists and specifies control measures for communicable diseases. A copy of the

"Control of Communicable Diseases ~~in Man"~~ Manual" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.

AUTH: Sec. 50-1-202 and 50-2-118, MCA
IMP: Sec. 50-1-202 and 50-2-118, MCA

16.28.1001 ISOLATION OF CASE--TESTING AND QUARANTINE OF CONTACTS (1) Tuberculosis isolation as defined in ARM 16.28.101 must be imposed by the department or the local health officer upon a case of communicable tuberculosis until the infected person is determined by the department or local health officer to be no longer communicable.

(2) and (3) remain the same.

AUTH: Sec. 50-1-202, 50-2-118 and 50-17-103, MCA
IMP: Sec. 50-1-202, 50-2-118, 50-17-102, 50-17-103 and 50-17-105, MCA

4. The department is proposing a number of amendments to its rules concerning control of communicable diseases. The reasons why each of those changes is necessary are delineated below.

General: References throughout the rules to "his/her" and "s/he" have been altered because the Secretary of State's office, which prescribes the format for rules, discourages such designations. No substantive change of meaning has been effected by the alterations.

ARM 16.28.101:

(1) "Case" has been amended to mean a person with either a reportable disease or condition, rather than simply one with a reportable disease. The addition of "condition" was necessary to reflect that fact that the listing in ARM 16.28.202 of diseases that must be reported to local health authorities and/or the department is now proposed to include lead poisoning, which is not a disease. Therefore, since "case" is used throughout the rules to define individuals afflicted by an item on ARM 16.28.202's list, it would be inaccurate to confine the definition solely to someone with a reportable disease.

(2) "Gonococcal infection" is changed to "gonorrhea" in the definition of "sexually transmitted disease" to match the language in the definition of the same phrase in Section 50-18-101, MCA, thereby avoiding a conflict and any resulting confusion of meaning.

(3) The deletion of "epidemic" and the addition of "outbreak" in its place was needed because the existing rules used both terms, which are essentially interchangeable in meaning. Using one term in places and the other elsewhere leaves the impression that the meanings are different, which is not true. "Outbreak" more accurately gives the commonly understood sense of what

would likely occur in Montana and avoids the sensationalism sometimes associated with "epidemic".

(4) The reference in (22)(a) to "Guidelines" is amended to read "Guideline" to correct a typographical error. Since the Guideline for Isolation Precautions in Hospitals was updated in 1996, that version of the Guideline is now proposed to be incorporated as the standard to follow rather than the one published in 1983. Failure to incorporate the 1996 isolation precautions would endanger public health since the later publication incorporates thirteen additional years of experience and progress in control of communicable diseases. The addition of a publication number for orders is intended simply to facilitate ordering the document by health care providers and is not a regulatory standard.

ARM 16.28.201: In this and subsequent rules in this notice, the department is proposing amendments that would require name-based reporting of individuals with HIV infection or AIDS directly to the department. This will incorporate formal HIV-infection reporting into the existing AIDS surveillance system, with a few modifications to ensure the physical security of the information reported and the long-term protection of those reported. These modifications include reporting HIV/AIDS cases directly to the state health department and converting each name to a unique identifier (UI) once case investigation is completed, a further explanation of which is included below in the discussion of the amendments to ARM 16.28.204.

Current language mandates that cases of AIDS be reported to local health departments and cases of HIV infection be reported directly to the department without identifying information. Given the discrimination historically experienced by those with HIV infection, the latter requirement was a measure originally found necessary to ensure that the condition of those with HIV infection remained absolutely confidential, thereby encouraging them to seek diagnosis and medical care.

While the need to protect confidentiality remains particularly acute in the case of HIV infection as compared to other communicable diseases, the success of new therapies in delaying disease progression has had a dramatic impact on the number of AIDS cases reported. As a result, the information collected through AIDS case reports no longer provides adequate information to direct long term planning and prevention efforts.

Therefore, the information necessary to the department in order to provide cases and contacts with adequate followup and the department with better information about cases of both AIDS and HIV infection has been added to the rule. At the same time, in order to ensure that at-risk individuals continue to seek testing without confidentiality concerns, those testing HIV-positive at state-funded anonymous testing sites will not be reported by the site. In effect, an HIV-positive report will

not be reported until the individual goes to a health care provider, each of whom is already bound to maintain confidentiality by state law.

The exception for anonymous testing sites is also necessary to meet funding requirements of the Centers for Disease Control and Prevention (CDC), which require that anonymous testing be offered unless prohibited by state law (which it is not in Montana). The CDC funds are essential to the state to carry out public health activities.

Activities related to interviewing and partner notification are already in place and are not affected by proposed changes to the HIV-reporting system. HIV/AIDS case reports will be sent directly to the department and be evaluated there to ensure that complete and accurate information is collected on each case. The department will work with local health agencies and/or health providers to help ensure contact interviews and contact notification efforts occur. As with current practice with regards to AIDS cases, the department anticipates notifying and reporting information on HIV/AIDS cases via telephone to an individual to be designated by the health officer. The department believes this system will minimize the potential for unauthorized information release and help ensure that names of individuals reported are re-coded in a timely fashion.

The department's proposal to have all HIV/AIDS related reports come directly to the state is a departure from other reportable conditions. As already noted above, the departure is necessary because of the heightened need for protection of confidentiality in the case of HIV and AIDS while also facilitating the receipt by the state of the information needed to protect public health.

In addition, the CDC, which is the United States' prime authority on the most currently and nationally accepted disease control measures, has recommended that handling of case reports be minimized and that maintaining copies of reports at both the local and state level be discouraged.

The proposed package of changes to these rules concerning HIV and AIDS was developed after extensive reviews of existing systems and discussions with concerned individuals. The system outlined was viewed as the only viable option that provided a simple and reliable way for providers to report HIV/AIDS cases, allowed the department to conduct evaluation activities (medical record reviews, etc.), and addressed the confidentiality concerns of the affected populations.

Other options that the department considered included relying on the existing system or implementing a system based solely on unique identifiers. The present system was determined to be inadequate for accurate tracking purposes. A system based on unique identifiers was considered and reviews of such systems in place in other states were conducted. At this time, systems

based solely on unique identifiers have too many limitations with respect to ease of use and accuracy of the information gathered.

The amendments to subsections (1)(b) and (c) of the rule do not represent a substantive change, but are intended to make it easier to understand the requirements by eliminating a cross-reference that required checking another rule to see which diseases were concerned.

Finally, the cross-references in subsection (3) to laboratorian reports of HIV infection are necessarily proposed to be deleted because those reports, currently required by ARM 16.28.203, are also proposed to be deleted as unneeded.

ARM 16.28.202 and new Rule I: The proposed additions of lead poisoning reporting requirements and control measures to alleviate lead poisoning in children are made under legal authority different from that underlying all of the other control measures and reportable conditions currently contained in ARM 16.28.202 and the other provisions of ARM Title 16, Chapter 28. The subjects of the other provisions, unlike lead poisoning, are communicable diseases. The mandate for the lead reporting and control measures is contained in 50-1-202(8), MCA, which requires the department to "develop, adopt, and administer rules setting standards for ... operation of programs to protect the health of ... children ...".

The department presently receives funding from the Centers for Disease Control and Prevention for primary prevention of lead poisoning among children. This program helps ensure that screening, lead-hazard abatement, and other prevention mechanisms occur throughout the state. As a condition of this funding, the department must establish a formal reporting system of lead poisoning through rules or legislation.

Even low levels of lead are harmful, especially in children, and are associated with decreased intelligence, impaired neurobehavioral development, decreased stature and growth, and impaired hearing acuity. The importance of early intervention is essential and the process begins by ensuring that prompt reporting and follow-up occurs.

Therefore, the department is proposing to add lead poisoning to the list of reportable conditions in ARM 16.28.202, to indicate that the list now includes a condition (lead poisoning) as well as communicable diseases, and to provide specific control measures in new Rule I to ensure proper follow-up in children with elevated blood lead test results.

Specification of the blood lead level considered to constitute lead poisoning is necessary to avoid the investigation of lead levels that present little health risk. The department proposes to adopt the levels recommended by the CDC, which is the

nation's center for research on the subject and the best authority on what blood level constitutes a health threat to children. Adoption of any other standard would be contrary to the findings of the current research on the subject.

In the proposal, elevated blood lead levels (levels exceeding 10 ug/dl) would be reported to local health departments in a manner similar to that of communicable diseases. The reporting is not limited to elevated levels in children because if an adult is found to have an elevated level, it will likely lead public health authorities to a lead source that is a threat to children as well.

The control measures set out in proposed new Rule I detail CDC-recommended procedures for follow-up of children with elevated lead levels. These recommendations include periodic retesting when appropriate.

As an alternative, the department considered utilizing a voluntary and/or physician based reporting system. The department rejected that alternative because it believes that a reporting requirement mandating a combination of laboratory and provider based reporting will better ensure prompt reporting and follow-up and therefore better protection of the health of children. Recommendations regarding follow-up assessments specified in the draft control measures are based on CDC recommendations and no alternatives were identified.

An additional amendment in ARM 16.28.202(1)(a) was necessary to incorporate advances in laboratory methods used to detect HIV infection. If the reference is not updated, the current definition would fail to address several means of detecting HIV infection that do not rely on the detection of antibodies.

The reference in subsection (1) to an "unusual outbreak" of a communicable disease needs to be amended to read "an occurrence in a region of a case or cases ..with a frequency in excess of normal expectancy" in order to be somewhat more detailed about what should be reported and to recognize that even a single case of some diseases may be considered an outbreak.

Finally, the department proposes to require reporting of <u>any</u> unusual incident of unexplained illness in either human or animal. The department finds the proposed amendment necessary in order to be able to get the information necessary for public health authorities to determine the nature, source, and extent, if any, of the danger to the public's health.

<u>ARM 16.28.203:</u> As part of the program the department is establishing to alleviate lead poisoning in children, the department proposes to require a laboratory that does any blood lead tests to provide the department directly with reports of all such tests they do. This is in addition to the standard and immediate reporting to local health departments of elevated

blood lead levels. That direct information about all of the tests performed, including those whose results are negative, is necessary for the department to obtain accurate information about the incidence and pattern of lead poisoning in the state.

The requirement of subsection (4) that cases of AIDS or HIV be reported by the end of the week was deleted as unnecessary and in conflict with the requirement in ARM 16.28.201 that such reporting be done immediately.

Subsection (6) was removed as unnecessary because the same information is provided via subsection (5), which requires reporting of all negative and positive tests for sexually transmitted diseases, HIV infection included. Keeping the requirement would be redundant.

The rest of the additions and changes to ARM 16.28.203 are necessary to reflect and coordinate with parallel changes in ARM 16.28.202.

ARM 16.28.204: Most of the proposed amendments to this rule reflect the changes already discussed in HIV and AIDS reporting requirements, and are necessary to provide a high degree of confidentiality needed while giving the department the epidemiological information it needs to take effective action to protect the health of the public and of individuals.

Since protection of their confidentiality remains vitally important to HIV cases, the proposed amendments ensure that, after 30 days have passed--giving time to investigate the case and the case's contacts--identifying information will be deleted from the case's records, replaced by a unique identifier to be used internally by the department alone. The names and addresses of HIV/AIDS cases will be stripped from all paper and electronic records and converted to a UI based on initials, a birth date and a partial social security number.

The UI, consisting of 16 numeric characters, will be used internally by the department to identify and eliminate duplicate reports as well as protect the identities of individuals reported in the event information was lost, stolen, or otherwise compromised.

To assess the impact of the proposed system, evaluation activities will include monitoring testing data for unexpected decreases, and monitoring entry into the care system to determine if entry is being delayed as a result of the reporting system. In the event the proposed HIV-reporting system is found to negatively impact access to testing or treatment, the department will reassess the reporting system. At this point in time, however, the above system is considered by the department to best provide the Department with the information it needs for epidemiological purposes, while protecting the confidentiality of the persons most directly impacted.

ARM 16.28.601: The amendments to this rule are necessary to clarify who is responsible for carrying out the specific communicable disease control measures otherwise contained in the rules. The current language in effect makes several individuals at once equally responsible for carrying out those control measures, which is neither necessary, logical, nor reflective of current public health practice, which places the primary responsibility on local health officers.

ARM 16.28.605 through 16.28.1001: The specific control measures contained in the rules included in this notice are proposed to be amended to clarify precisely who is responsible for imposing the indicated measures. This action is necessary to alleviate occasional confusion on that point and to ensure that those responsible know it and take the necessary action to protect public health.

Since local health officers bear the brunt of the responsibility, but in reality and as a practical matter may have to rely on other staff members to take the necessary action, whenever the local health officer is mentioned as the responsible party, the amendatory language acknowledges that it is permissible for the officer's designee to act in the officer's stead. Failing to add that language leaves the impression that only the officer personally must take the required action, which is unnecessary and an unfair burden on health officers.

In addition, all references to the Control of Communicable Diseases in Man have been updated to refer to the latest version of that document in both edition and title, thereby including the most up-to-date communicable disease manual available. Failure to update the reference could be detrimental to public health because it would mean that the reference used would not reflect the most current public health knowledge.

The amendments of all references to "epidemic" in the rules to read "outbreak", as well as the substitution of "gonorrhea" for "gonococcal infection", are necessary for the reasons cited in the discussion above concerning the amendments to ARM 16.28.101.

ARM 16.28.605D: In paragraph (2), as noted in the rationale for 16.28.601 above, language was added to clearly indicate who is responsible for following up with chlamydial infection contacts. The addition is necessary to clearly indicate that it is the local health authority's responsibility to follow up, which is traditionally the practice.

In addition, deletion of the language requiring contacts to receive an examination and medical treatment indicated by the exam and/or lab findings is necessary to recognize that current medical practice, in the case of chlamydia, may not require the contact to be examined or tested but simply to receive the appropriate medication. Continuing to require an examination of

every contact not only would be requiring action that is unnecessary medically and an unnecessary expense, but would be contrary to the current practice of most medical professionals.

ARM 16.28.610A: The proposed amendment of paragraph (2) is necessary to make identification and treatment of contacts mandatory, rather than simply recommended, since the purpose of the rules is to prescribe the measures that must be followed in order to control the spread of communicable disease. Leaving the provision as a recommendation does not ensure that the necessary control measures are implemented. The requirement that contacts be examined is no longer included, in part because diagnosis of granuloma inguinale is difficult, especially given the rarity of its occurrence in this part of the world and the resultant lack of experience of laboratories with determining its existence. More important, because treatment of granuloma inguinale is relatively simple and oftentimes involves only a single dose of a common antibiotic, once the existence of a case is confirmed, the least intrusive and most effective method of control of spread of the disease is to identify the contacts and treat them on the assumption that they are infected. Again, to require a diagnosis of the disease in the contacts before requiring treatment may not be effective because of the difficulty in making that diagnosis.

ARM 16.28.623: The Department is proposing to strengthen rules related to the control of pertussis (whooping cough). The proposed rule would require all individuals identified by health authorities as close contacts to a confirmed case of pertussis be referred to a physician to determine the need for preventive treatment. In addition, close contacts would be monitored for symptoms and be medically evaluated if symptoms occur during this time.

The proposed modifications emphasize the importance of prompt medical treatment and evaluation of symptomatic close contacts. These steps are performed by health authorities identifying and referring close contacts for preventive treatment, by monitoring close contacts for possible symptoms of pertussis, and by offering immunizations as indicated. The rule would allow the exclusion of symptomatic individuals from a public setting pending a medical evaluation.

Pertussis is a serious condition which can affect individuals of any age. The existing rule does not reflect the current recommendations regarding preventive treatment from nationally accepted sources such as the Control of Communicable Diseases Manual, the American Academy of Pediatrics Red Book, and other sources. Preventive treatment supplements immunization efforts to control the spread of the illness, and is the only option for individuals for whom the vaccine is not appropriate.

The revised rules reflect the current standard of practice and no reasonable alternatives to the proposed amendments were

identified after a review of the available resources.

ARM 16.28.626A: The department is proposing to strengthen rules related to the control of rabies, action it finds necessary to more sufficiently protect the public from the threat of rabies. The proposed rule clarifies the role and authority of local health officials with respect to the investigation of suspected rabies exposures and observation of the animal involved. The modifications require an investigation to be initiated by health authorities or their designees regardless of the vaccination status of the animal, and require health authorities to make recommendations regarding treatment and provide a medical referral as needed.

In accordance with national recommendations, the list of animals which may be isolated and observed was expanded to include ferrets, and the role of the local health officer with respect to isolating and observing an animal was also clarified in order to ensure proper observation and veterinary assessment when appropriate. The proposed changes reflect national recommendations and the current standards of practice relating to the management of animals involved in suspected rabies exposures, and adopting any other standards would be insufficient to protect the public.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. August 24, 2000. Data, views or arguments may also be submitted by facsimile (406) 444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Eleanor Parker
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State July 17, 2000.

**BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA**

In the Matter of the Proposed Amendment of a Rule Pertaining to Accrual of Interest on Utility Customer Deposits	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 38.5.1107

TO: All Concerned Persons

1. On Wednesday, August 30, 2000, at 9:00 a.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment of ARM 38.5.1107.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on August 24, 2000, to advise us of the nature of the accommodation that you need. Please contact Kathy Anderson, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618.

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

38.5.1107 INTEREST ON DEPOSITS (1) Interest on deposits held shall be accrued at the rate of ~~1 percent per month~~ three percent per year. Interest shall be computed from the time ~~to~~ of the deposit to the time of refund or of termination, to the nearest whole month, without compounding.

AUTH: 69-3-103, MCA
IMP: 69-3-103, MCA

4. Hot Springs Telephone Company has petitioned for this rulemaking. The PSC grants the petition and initiates this proceeding for purposes of receiving public comment. The rule is reasonably necessary because the present interest rate on customer deposits (one percent per month) may be high. The PSC does not necessarily agree that the interest rate proposed by Hot Springs (three percent per year, to the nearest whole month, without compounding) is the appropriate interest rate. Based on public comments submitted on this proposed amendment, if any, and based on the PSC's own evaluation of the matter, the interest rate will likely be established at some point between three percent and twelve percent per year.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than August 30, 2000, or may be

submitted to the PSC through the PSC's web-based comment form at http://psc.state.mt.us/PublicComment/PublicComment.htm or through e-mail at PSC@state.mt.us no later than August 30, 2000. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-00.5.3-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC maintains a list of persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines, motor carriers, rail carriers, and administrative procedures. Such written request may be mailed or delivered to Rhonda Simmons, Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Rhonda Simmons at 406-444-7618, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Dave Fisher
Dave Fisher, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE JULY 13, 2000.

**BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA**

In the Matter of the Proposed Adoption of Rules Pertaining to Flexible Pricing for Regulated Telecommunications Service	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULES I THROUGH III

TO: All Concerned Persons

1. On Wednesday, August 30, 2000, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the adoption of new Rules I through III.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on August 24, 2000, to advise us of the nature of the accommodation that you need. Please contact Kathy Anderson, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618.

3. The proposed new rules provide as follows:

RULE I. FLEXIBLE PRICING FOR REGULATED TELECOMMUNICATIONS SERVICE -- GENERAL (1) "Flexible pricing" is a regulatory procedure which permits regulated rates for certain regulated telecommunications services to be changed quickly to meet market conditions. Rates resulting from flexible pricing are sometimes referred to as "market retention rates" or "competitive response rates." Flexible pricing may include a fixed alternative rate or a permissible range of rates with fixed minimum and maximum rates.

(2) Flexible pricing is not detariffing (i.e., total or partial detariffing of rates as provided at 69-8-807, MCA). A flexible pricing rate and operating rules related to such rate remain regulated and tariffed. Flexible pricing does not include forbearance (i.e., forbearance of rate regulation as provided at 69-3-808, MCA) or promotions (i.e., promotional pricing, market trials, and sales-related activities as provided at 69-3-305, MCA). Detariffing, forbearance, and promotional pricing are separate and distinct from flexible pricing.

AUTH: 69-3-103, MCA
IMP: 69-3-807, MCA

RULE II. FLEXIBLE PRICING FOR REGULATED TELECOMMUNICATIONS SERVICE -- PROCEDURE (1) Applications for flexible pricing must include:

(a) a statement that the application is for flexible pricing in accordance with these rules and a statement that the

application is not for detariffing, forbearance, or promotional pricing;

(b) an identification of the tariffed rate and the tariffed operating rules related to such rate which will be affected by or implemented in the flexible pricing, accompanied by a proposed tariff page reflecting all proposed tariff changes, through interlining of material to be deleted and underlining of material to be added, that will result if the application for flexible pricing is approved;

(c) specifically, by each wire center to which the application for flexible pricing pertains:

(i) an identification of the number, size, and distribution of alternative providers of the service to be flexibly priced;

(ii) documentation of the entry of each alternative provider into the area affected;

(iii) the extent to which services are available from these alternative providers;

(iv) the ability of these alternative providers to make functionally equivalent or substitute service readily available;

(v) the present market share of each alternative provider for the service; and

(vi) an estimate of the number of customers who have chosen service from the alternative providers;

(d) a description of the overall impact of the flexible pricing on the continued availability of existing services at just and reasonable rates, including the continued maintenance of basic service at affordable rates;

(e) a description of the overall impact of the proposed flexible pricing on the continued encouragement of competition in the provision of telecommunications services; and

(f) verification that the alternative lower price or the minimum price in a proposed range of prices cover all relevant incremental costs for each specific geographical area and product mix for which the flexible pricing is proposed.

(2) Applications for flexible pricing will be noticed to the public and processed as contested cases in accordance with commission procedural rules.

AUTH: 69-3-103, MCA
IMP: 69-3-807, MCA

RULE III. FLEXIBLE PRICING FOR REGULATED TELECOMMUNICATIONS SERVICE -- APPROVAL (1) The commission will approve or deny flexible pricing on a case-by-case basis considering all relevant factors.

(2) Rate changes required to offset any reduction in revenues resulting from implementation of flexible pricing will only be considered in the context of a general rate proceeding.

AUTH: 69-3-103, MCA
IMP: 69-3-807, MCA

4. Adoption of the new rules is reasonably necessary to eliminate uncertainty or confusion among flexible pricing procedures and similar procedures and to establish filing

requirements so that flexible pricing applications will include information necessary for the PSC and interested persons to properly consider the matter.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than August 30, 2000, or may be submitted to the PSC through the PSC's web-based comment form at http://psc.state.mt.us/PublicComment/PublicComment.htm or through e-mail at PSC@state.mt.us no later than August 30, 2000. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-00.6.4-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC maintains a list of persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines, motor carriers, rail carriers, and administrative procedures. Such written request may be mailed or delivered to (Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601), faxed to Rhonda Simmons at 406-444-7618, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Dave Fisher

Dave Fisher, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE JULY 13, 2000.

BEFORE THE BOARD OF LANDSCAPE ARCHITECTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to fees) NOTICE OF AMENDMENT OF ARM 8.24.409 FEE SCHEDULE

TO: All Concerned Persons

1. On May 11, 2000, the Board of Landscape Architects published a notice of the proposed amendment of the above-stated rule at page 1132, 2000 Montana Administrative Register, issue number 9.

2. The Board has amended ARM 8.24.409 exactly as proposed.

3. No comments or testimony were received.

BOARD OF LANDSCAPE ARCHITECTS
SHELLY ENGLER, CHAIRMAN

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 17, 2000.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to forms and reports, pharmacy technicians and patient counseling	)))))	NOTICE OF AMENDMENT OF ARM 8.40.906 REQUIRED FORMS AND REPORTS, 8.40.1301 USE OF PHARMACY TECHNICIAN, AND 8.40.1503 PATIENT COUNSELING

TO: All Concerned Persons

1. On February 24, 2000, the Board of Pharmacy published a notice of the proposed amendment of the above-stated rules at page 540, 2000 Montana Administrative Register, issue number 4. On April 13, 2000, the Board of Pharmacy published a notice of public hearing at page 909, 2000 Montana Administrative Register, issue number 7. The hearing was held May 4, 2000.

2. The Board has amended ARM 8.40.906 and 8.40.1301 exactly as proposed.

3. The Board has amended ARM 8.40.1503 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.40.1503 PATIENT COUNSELING (1) same as proposed.

(2) Each pharmacy shall have at least one area that offers appropriate visual and auditory patient confidentiality for patient counseling. This requirement shall go into effect three years from the date of enactment.

(3) through (5) same as proposed.

4. The Board received 18 comments. The comments received and the Board's responses are as follows:

COMMENT NO. 1: The Montana State Pharmaceutical Association commented that they supported the adoption of the amendment to ARM 8.40.1301.

RESPONSE: The Board thanks the Association for its support. The rule was adopted by the board as proposed.

COMMENT NO. 2: One commentor stated that he disapproved of the rule and felt that it would be confusing and expensive.

RESPONSE: The Board disagrees with commentor and, as previously stated, has adopted the amendment to the rule.

ARM 8.40.1503

COMMENT NO. 3: The Montana State Pharmaceutical Association expressed reservations and concerns that the proposed amendment would not lead to better patient care and would

place additional burdens on pharmacists and would result in numerous compliance issues and believed that a comprehensive approach is warranted. The Association requested that the amendment be withdrawn at this time and reintroduced at a later date.

COMMENTS NO. 4 & 5: Two commentors expressed concerns relating to financial burdens the rule will place on the small owner/operator of a pharmacy and asked that the rule be reconsidered.

COMMENT NO. 6: One commentor expressed support for the Board's proposed amendment stating that it would lead to better patient counseling.

COMMENT NO. 7: The Montana Retail Association requested that the rule be clarified, expressing concerns regarding potential remodeling and asked that the board allow for existing space to be utilized.

COMMENT NO. 8: The National Association of Chain Drug Stores also expressed concerns about potential remodeling and requested that the existing pharmacy be allowed to identify the appropriate space for patient counseling.

COMMENT NO. 9: One commentor stated that the amendment does not take into account the physical limitations of existing pharmacies, that pharmacies are being forced to spend several thousand dollars, that the rule is too vague to be enforced and that consumers are not requesting patient counseling.

COMMENT NO. 10: One commentor expressed concern that the rule will not be enforced as to mail order and Internet pharmacies.

COMMENTS NO. 11 - 18: Eight individuals commented at the hearing, which comments reflected the written concerns stated by commentors 3 through 10.

RESPONSE TO COMMENTS 3 - 18: The Board reviewed the concerns of the commentors and will clarify the intent of the rule. The Board does not envision that pharmacies will have to make major structural changes to their existing establishments to comply with the rule. To comply with the rule, the Board envisions a myriad of options for pharmacies ranging from a patient counseling room, to private areas away from the general public, voting booth style or partitioning the counter space to name a few examples. Each pharmacy can decide how to set up patient counseling areas depending on cost, time and space available. The Board does believe that patient counseling is beneficial to the public health, safety and welfare and will enable the public to be informed of the drugs they are taking. Further, given the myriad of options each pharmacy has in establishing patient counseling areas, the costs of establishing an area should be minimal. Because of

the comments received, the Board has amended the rule to make it effective three years from the date of enactment, which should allow the Board's inspector to visit pharmacies statewide and assist in the process of establishing appropriate patient counseling areas.

BOARD OF PHARMACY
JOHN POUSH, R. Ph., PRESIDENT

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 17, 2000.

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to fees	)	NOTICE OF AMENDMENT OF ARM 8.56.409 FEE SCHEDULE AND 8.56.607 PERMIT FEES

TO: All Concerned Persons

1. On February 10, 2000, the Board of Radiologic Technologists published a notice of the proposed amendment of the above-stated rules at page 239, 2000 Montana Administrative Register, issue number 3. On March 30, 2000, the Board of Radiologic Technologists published a notice of public hearing at page 783, 2000 Montana Administrative Register, issue number 6. The hearing was held April 24, 2000.

2. The Board has amended ARM 8.56.409 and 8.56.607 exactly as proposed.

3. The Board received 13 written comments and 3 individuals testified at the rule hearing. The comments received and the Board's responses are as follows:

COMMENT NO. 1: Multiple comments were received requesting a copy of the income and expenses for the last three years as well as further justification for the fee increases and a budget breakdown of the projected revenues and expenses.

RESPONSE: The Board is required to set fees commensurate with costs in administering the program. Since the Board was created in 1977, revenues from fees collected were greater than expenditures and a cash balance resulted that was in excess of the amount recommended. For example, the cash balance for the board at the end of fiscal year 1996 was $130,375.22 when the expenditures for the same fiscal year were $36,488.25. In 1997 House Bill 240 was passed that prohibited state agencies from maintaining a cash balance that would be greater than necessary to finance the services of the board for more than two years. The Department of Commerce, in order to address the cash balance inequity, received approval from the board to use some of the excess cash balance to support the creation of a new database (Oracle) for the Professional and Occupational Licensing Division. In fiscal year 1998 the Board's Oracle appropriation was $43,395 and the Internet appropriation was $992. At the end of fiscal year 1999 the cash balance of the Board was decreased to $68,371.37. The Board's general operating expenses have increased from $11,809 in fiscal year 1999 to $29,388 in fiscal year 2000. The breakdown of the $64,623 budget appropriation for the board in FY 2000 is as follows:

Category	Amount	Explanation
Per diem	$ 900	$50/day for board members while conducting board business

Other services	$24,288	Contracted services (inspector), legal fees and printing
Supplies and materials	3,268	Office equipment, envelopes, letterhead, etc.
Communications	2,682	Postage and mailings, telephone charges
Travel	3,344	Board member and staff travel reimbursements
Rent	46	Records storage
Other expenses	600	Dues, registration fees indirect costs
Indirect	89	
MT Prime	18	
Recharges	29,388	Division charges for every day costs of business operations. For example: staff salaries (program manager, attorneys, investigators, management), rent, utilities, audit fees, monthly computer charges

COMMENT NO. 2: One commentor asked for a copy of the biennial report.

RESPONSE: The biennial report was mailed to the commentor.

COMMENT NO. 3: One commentor requested an itemized list of time spent on limited permit issues versus licensed radiologic technologist issues.

RESPONSE: The Division does not monitor time increments, however, examples of where time is spent would be: Board mailings, change of addresses, communication to the public, applicants and other entities and agencies, rule-making and management of the board office. A contracted inspector for the board inspects all facilities in the state, which includes radiologic technologists and limited permit holders.

COMMENT NO. 4: One commentor asked why there is a 100% increase in fees for licensed technologists compared to a 62% increase for limited permit holders.

RESPONSE: A limited permit holder has a smaller scope of practice, e.g. a limited permit holder may only have one category of x-ray they can perform. The fee justification for projected fees was used to calculate revenue that would be commensurate with program costs.

COMMENT NO. 5: One commentor requested an explanation of why the state license should cost more than the American Registry of Radiologic Technologists (ARRT) license to maintain when it is the ARRT that pays the expense of tracking the radiologic technologist continuing education.

RESPONSE: In order to work in the state of Montana as a radiologic technologist the legislature has declared that the practice of this profession affects the public health, safety and welfare and that it is therefore necessary to regulate and control such practices in the public interest. The Board is responsible for providing information to the public regarding licensure and the rules and statutes governing radiologic technologists. The Board also has the responsibility for the application/licensing process, rule-making, board meetings to conduct the business of the Board, practice issues, testimony before the legislature, monitoring the complaint/disciplinary process which results in the expenditures described in the Board's responses to Comment No. 1, 3 and 6.

COMMENT NO. 6: One commentor asked what the Board is doing for licensed technologists the rest of the year, when all of the licenses are due February 1 and the majority of the work on the licenses is done in January and February.

RESPONSE: The governance and regulations of the Board includes: the licensing/application process, rule-making, board meetings to conduct the business of the board, practice issues that come before the Board for deliberation, such as who can operate a mini C arm, dexameter and fluoroscopy teleradiography. Testimony before the legislature is needed. Compliance issues reported by the inspector and through the complaint/disciplinary process.

COMMENT NO. 7: One commentor stated that he understood that because of the excessive cash balance the Board had to reduce the fees in 1997, however, he does not understand why the Board allowed the balance to go so low that the Board now has to double the license fees.

RESPONSE: The Board submits the six year comparison expenditures and cash balance in response to the comment as well as the operational plan for fiscal year 2000 and 2001. Copies of these documents may be obtained from the Board office.

COMMENT NO. 8: One commentor asked how the decision was made to increase fees and what other options were considered.

RESPONSE: Decisions were made and options considered in regularly scheduled board meetings and using the cash projection table.

COMMENT NO. 9: One commentor asked what benefits are received from the Board for being licensed in Montana and stated that some states are functioning fine without requiring a state license for radiologic technologists.

RESPONSE: The benefit is to the public. The purpose of the regulation is to protect the public from the unprofessional,

improper, unauthorized or unqualified practice of radiologic technology. According to the American Society of Radiologic Technologists, 34 states have licensure laws, four states have partial licensure laws and 14 states are proposing legislation for requiring licensure.

COMMENT NO. 10: One commentor asked what the purpose for the Board was as it relates to the national registry (ARRT) or society (ASRT).

RESPONSE: The ARRT and ASRT are professional associations. The Board has been established by the legislature to protect the public health, safety and welfare by regulation and control of the practice of radiologic technology.

COMMENT NO. 11: One commentor asked if the Board has explored electronic means of operating the board.

RESPONSE: The Board is moving toward that end and database and internet allocations were made to the budget.

COMMENT NO. 12: One commentor asked if there was a tracking system for the limited permit technologists continuing education.

RESPONSE: ARM 8.56.414(2) provides that the permit holder is required to make records and documentation available to the Board as proof of meeting the continuing education requirement, if so requested during a random audit.

COMMENT NO. 13: One commentor stated that based on approximately 770 licensed radiologic technologists and approximately 320 limited permit holders, the income from last year's license fees was $27,250. With the proposed increase the moneys put in the budget would amount to $51,300. Is this amount of a budget increase really necessary?

RESPONSE: The Board submits the six year comparison expenditures and cash balance in response to the comment as well as the operational plan for fiscal year 2000 and 2001. Copies of these documents may be obtained from the Board office.

COMMENT NO. 14: One commentor stated that other revenues from other licensed agencies such as respiratory therapists and cosmetologists as well as other agencies also have annual fees and asked if the same office collected those fees and if those fees are considered/calculated in the same budget.

RESPONSE: There are 34 boards in the Professional and Occupational Licensing Division. Each board independently collects fees commensurate with each board's administration costs. Each board has special revenue accounts. There is no

general fund money used for the board programs nor are the separate boards' funds co-mingled.

COMMENT NO. 15: One commentor stated that additional revenue could also be raised by licensing nuclear medicine and radiation therapy technologists because they administer ionizing radiation and asked why the state law doesn't apply to them as well.

RESPONSE: This would require a legislative change. The society or individual(s) can contact their legislator to sponsor a bill that they have drafted regarding the addition of licensing categories.

BOARD OF RADIOLOGIC TECHNOLOGISTS
JANE CHRISTMAN, CHAIRMAN

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 17, 2000

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to continuing education and renewal and the adoption of a rule pertaining to mandatory continuing education for new salespersons	))))))	NOTICE OF AMENDMENT OF ARM 8.58.415A CONTINUING REAL ESTATE EDUCATION AND 8.58.426 RENEWAL AND THE ADOPTION OF NEW RULE I NEW LICENSEE MANDATORY CONTINUING EDUCATION - SALESPERSONS

TO: All Concerned Persons

1. On May 11, 2000, the Board of Realty Regulation published a notice of the proposed amendment and adoption of the above-stated rules at page 1134, 2000 Montana Administrative Register, issue number 9.

2. The Board has amended ARM 8.58.415A and 8.58.426 exactly as proposed.

3. The Board has adopted NEW RULE I (ARM 8.58.415D) NEW LICENSEE MANDATORY CONTINUING EDUCATION - SALESPERSONS as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE I (ARM 8.58.415D) NEW LICENSEE MANDATORY CONTINUING EDUCATION - SALESPERSONS (1) and (2) same as proposed.

(3) ~~The interim license will convert to a permanent~~ A new license will be issued upon completion of the new licensee mandatory continuing education.

(4) Evidence of completion of the new licensee mandatory continuing education may be forwarded to the board office at any time after completion of the mandatory course, ~~in order to convert the interim license to a permanent license~~ but prior to December 31 of the year of the initial license date.

(5) and (6) same as proposed.

4. No comments or testimony were received.

BOARD OF REALTY REGULATION
JOHN BEAGLE, CHAIRMAN

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 17, 2000.

BEFORE THE WEIGHTS AND MEASURES BUREAU
STATE OF MONTANA

In the matter of the amendment of rules pertaining to the Weights and Measures Bureau	)	NOTICE OF AMENDMENT OF RULES PERTAINING TO THE WEIGHTS AND MEASURES BUREAU

TO: All Concerned Persons

1. On May 25, 2000, the Weights and Measures Bureau published a notice of the proposed amendment of rules pertaining to the Weights and Measures Bureau at page 1275, 2000 Montana Administrative Register, issue number 10.

2. The Weights and Measures Bureau has amended ARM 8.77.105 and 8.77.107 exactly as proposed.

3. No comments or testimony were received.

WEIGHTS AND MEASURES BUREAU
JACK KANE, BUREAU CHIEF

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 17, 2000

**BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA**

In the matter of the adoption of new rules 10.102.5105 and 10.102.5106 relating to federation advisory boards and base grants	NOTICE OF ADOPTION

TO: All Concerned Persons:

1. On June 15, 2000 the state library commission published an amended notice of the proposed adoption of new rules I (10.102.5105) and II (10.102.5106) relating to federation advisory boards and base grants at page 1471 of the 2000 Montana Administrative Register, issue no. 11.

2. The state library commission has adopted ARM 10.102.5106 (New Rule II) as proposed and ARM 10.102.5105 (New Rule I) with the following changes.

10.102.5105 JOINING LIBRARY FEDERATIONS (1) through (2) same as proposed.

(a) The majority of the board shall be public library trustees and the board ~~must~~ shall have at least one representative~~s~~ from each ~~of the other~~ type~~s~~ of librar~~iesy~~ that ~~are~~ participates in the federation ~~members~~;

(b) At the spring meeting, the federation delegates shall elect the board members according to federation advisory board bylaws.

AUTH: Sec. 22-1-103, MCA;
IMP: Sec. 22-1-103, 22-1-328, 22-1-330, 22-1-331, 22-1-402, 22-1-404, and 22-1-413, MCA.

3. Written comments received follow along with the response of the state library commission:

COMMENT 1: New rule I is unclear in that it makes it sound as if there are two sets of bylaws, one for the board, and one for the Federation itself.

RESPONSE 1: The state library commission agrees, and will insert "advisory board" into the sentence to clarify.

COMMENT 2: Insert language in New Rule I(2)(a) to clarify that each type of library has one representative.

RESPONSE 2: The state library commission agrees, and will amend the sentence.

COMMENT 3: It seems that school and university libraries, with respect to federation membership and inter-library loan reimbursement, are treated inconsistently. All schools within

a district count as a single district, as do all libraries within a university. For the purpose of federation membership, schools and university libraries are treated as discrete entities, each school library as a single entity, as well as each university library. This makes for a very large number of potential members. The added expense and workload to the federation of communicating with these potential members, finding meeting locations, designing programs, and maintaining membership lists has not been addressed.

RESPONSE 3: Montana law states that "schools," which means individual schools and not school districts, may join federations. The state library commission believes that the intent of the change in federation membership is designed to increase the membership of all types of libraries in federation activities. If a large increase in federation members is achieved and becomes an administrative problem, the state library commission believes that other action, such as increasing administrative support or funding is preferable, rather than restricting membership to a limited number.

COMMENT 4: Under New Rule I(2), law states that the monies, coal tax and state aid, are to remain with public library members of the federation. However, federations are now required to have representation from each of the other types of libraries as voting members who will, in part, determine how this public library money is spent. This seems to be a conflict-ridden situation. While the majority of the board will be public library trustees, it is possible that a quorum of members voting on federation plans of service and use of federation funds could represent a majority other than public library trustees. Responsibility without accountability is a bad idea.

RESPONSE 4: According to agency counsel, the law states that each library in the state is eligible to join federations. Because each library is eligible to join, each should have an equal opportunity to vote and influence federation decisions. The advisory board, which is by law required to have a majority of public library representatives, has the authority to move the plan of service on to the state library commission who makes the final decision on the plan. Each of these boards will act in the best interests of the federations and in compliance with the law.

4. As a result of the comments received the state library commission has adopted rule 10.102.5105 as amended and rule 10.102.5106 as proposed.

Karen Strege

Karen Strege
State Librarian and Rule Reviewer

Certified to the Secretary of State July 17, 2000.

**BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA**

In the matter of the adoption of NEW RULES I and II; the transfer and amendment of ARM 17.56.1202, 17.56.1205 through 17.56.1210, 17.56.1215 through 17.56.1218, 17.56.1221 through 17.56.1223, 17.56.1226 through 17.56.1229, 17.56.1232 and 17.56.1252 through 17.56.1256, the amendment of ARM 17.56.1003 through 17.56.1005, and the repeal of ARM 17.56.1201, 17.56.1233, 17.56.1235 through 17.56.1240, 17.56.1242, 17.56.1245 through 17.56.1247, 17.56.1250, 17.56.1251 and 17.56.1260 pertaining to underground storage tank licensing	)	CORRECTED NOTICE OF ADOPTION, TRANSFER, AMENDMENT AND REPEAL (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On April 13, 2000, the Department of Environmental Quality published notice at page 969 of the 2000 Montana Administrative Register, Issue No. 7, of the adoption of new rules, and the transfer, amendment and repeal of other rules pertaining to underground storage tank licensing and permitting. In that notice, the Department adopted, transferred, amended and repealed the rules as proposed in the notice of public hearing on proposed adoption, transfer, amendment and repeal ("notice of public hearing") published at page 572 of the 2000 Montana Administrative Register, Issue No. 4. However, the notice of public hearing contained several minor errors and the purpose of this corrected notice is to correct those errors.

2. The reason for each correction shown below is stated after the correction. The corrected rule amendments read as follows:

<u>17.56.1304 PERMIT APPLICATION REVIEW FEES</u>

(1) through (3) remain as adopted.

~~(4) The permit application review fee shall be calculated using only the fee structure provided in (3)(b) of this rule, whenever the permit covers tank systems identified in both (3)(a) and (b) of this rule.~~

(4) and (5) remain as adopted.

Reason: In the notice of public hearing, the Department incorrectly numbered existing (4) as (2).

<u>17.56.1309 INSTALLATION AND CLOSURE INSPECTION FEES</u>

(1) An inspection fee deposit of $90.00 for the use of a

local government or a department installation or closure inspector ~~shall~~ must be submitted to the department for each installation or closure not conducted by a licensed installer. The owner or operator shall submit the inspection fee deposit with the permit application in accordance with ARM 17.56.1308 and the fee must be paid in the form of a check or money order made payable to the Montana department of environmental quality.

(2) through (4) remain as adopted.

Reason: In the notice of public hearing, the Department inadvertently omitted the underlinings and strikeout shown above in (1) to show addition and deletion of language and in that section.

17.56.1404 ~~INSTALLER LICENSING~~ LICENSE FEES

(1) through (5) remain as adopted.

Reason: In the notice of public hearing, the Department inadvertently omitted the words "INSTALLER LICENSING" with interlining in the catchphrase of the rule, to show deletion of those words from the catchphrase.

17.56.1405 LICENSE EXAMINATION AND RE-EXAMINATION

(1) To become licensed, an applicant for a license must successfully complete a written examination. The department shall offer the examination a minimum of 2 times per year at such time(s) and place(s) as the department determines. The department shall give public notice of the time and place of the examination by submitting a news release to the daily newspapers of general circulation within the state of Montana.

(2) and (3) remain as adopted.

(4) The examination must test the applicant's knowledge of the statutes, ~~and~~ rules, current technology and industry recommended practices applicable to the type of license sought.

(5) through (10) remain as adopted.

Reason: In the notice of public hearing, the Department inadvertently omitted a new comma after the phrase "To become licensed," to be added to (1). The Department also inadvertently omitted the underlinings and strikeout shown above in (4) to show addition and deletion of language and commas in that subsection.

17.56.1406 LICENSE ISSUANCE, TERM~~,~~ AND RESTRICTIONS

(1) and (2) remain as adopted.

(3) Licenses may be revoked, suspended, modified or restricted prior to expiration in accordance with 75-11-211, MCA, (4) of this rule, and ARM 17.56.1423 through 17.56.1426, ~~,~~ as applicable.

(4) and (5) remain as adopted.

Reason: In the notice of public hearing, the Department omitted the strikeout shown in the catchphrase above, to show changes in the catchphrase of the rule. In (3), the Department

also omitted underlining of the comma after "17.56.1426," to show addition of that comma, and omitted a comma with interlining after "17.56.1260," to show deletion of that comma.

17.56.1408 APPROVAL OF CONTINUING EDUCATION COURSES (1) An entity offering a continuing education course intended to fulfill the requirements of ARM 17.56.1407, or a licensee planning to take the course, must submit a detailed description of the course to the department for approval of the course at least 15 days before the beginning of the course.

(2) remains as adopted.

Reason: In the notice of public hearing, the Department inadvertently omitted underlining of the words "a licensee," to show addition of those words to (1).

17.56.1409 ~~INSTALLER~~ DUPLICATE LICENSES (1) remains as adopted.

Reason: In the notice of public hearing, the Department inadvertently omitted the word "INSTALLER" with interlining in the catchphrase of the rule, to show deletion of the word from the catchphrase.

17.56.1421 DISCIPLINARY AND OTHER LICENSING ACTION GENERALLY (1) through (3)(a) remain as adopted.

(b) the threat of or actual injury to the health, welfare, or safety of the licensee, the licensee's employee(s), the public, or to the environment; and

(c) through (6) remain as adopted.

Reason: In the notice of public hearing, the Department incorrectly showed an interlined comma in (3)(b) of the rule after the word "injury" where a comma did not exist, and the Department omitted underlining of the word "the," to show addition of that word to the subsection.

17.56.1422 PROHIBITION OF UNPROFESSIONAL ~~INSTALLER~~ LICENSEE CONDUCT (1) Any of the following acts of a ~~licensed installer~~ person licensed under this subchapter constitute unprofessional conduct, are prohibited, and may result in the department conditioning, restricting, suspending or revoking a license issued under this subchapter:

(a) through (n) remain as adopted.

Reason: In the notice of public hearing, the Department inadvertently omitted the word "INSTALLER" with interlining in the catchphrase of the rule, to show deletion of that word from the catchphrase. In (1), the Department inadvertently omitted the words "licensed installer" with interlining to show deletion of those words, and omitted the underlinings shown above to show addition of the new language and commas underlined.

17.56.1004 IMPLEMENTING AGENCY PROGRAM SERVICES AND

REIMBURSEMENT (1) and (2) remain as adopted.

(3) Each implementing agency shall maintain accurate and complete records of the time and services for which reimbursement will be sought under this rule. By the tenth day of each calendar quarter, the implementing agency shall send to the department on a form determined by the department a statement showing the number of hours, to the nearest one-half of an hour, spent by each person in the performance of authorized services during the previous calendar quarter for which reimbursement is being claimed. The form shall designate the site and date for which activity was conducted. The chief financial officer of each implementing agency submitting a statement shall on the face of the statement attest to the validity and accuracy of the statement. Upon receipt of the statement, the department shall determine whether sufficient information is contained in the statement and supporting material for reimbursement to be paid under this rule. The department shall notify the implementing agency of any deficiency. Upon receipt of sufficient information showing authorized services were carried out during the previous calendar quarter in accordance with ARM Title 17, chapter 56, applicable industry standards and any limitations or conditions contained in the department's designation letter, the department shall reimburse the local governmental unit at the rate of $35.00 per hour. Claims for reimbursement not in accordance with this rule shall be denied. Claims shall be paid only within the limitations of departmental budgets and legislative appropriations.

(4) remains as adopted.

Reason: In the notice of public hearing, the Department inadvertently omitted underlining of the word "authorized" in (3), to show addition of that word.

17.56.1005 REVOCATION AND SURRENDER OF DESIGNATION

(1) remains as adopted.

(2) A revocation of designation by the department is effective upon written or oral notice to the local governmental unit. Following revocation, the local governmental unit may not submit claims for services to the department ~~which services~~ that were performed following revocation. Any claims so submitted are considered denied. The department shall reimburse the local unit of government for services performed in accordance with these rules prior to revocation of designation.

(3) and (4) remain as adopted.

Reason: In the notice of public hearing, the Department omitted changing the phrase "which services" to the word "that," which is necessary for clarity.

DEPARTMENT OF ENVIRONMENTAL QUALITY

by: *Mark A. Simonich*
MARK A. SIMONICH, Director

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State July 17, 2000.

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

In the matter of the adoption of rules I through XI, the amendment and transfer of ARM 46.12.1401, 46.12.1403, 46.12.1404, 46.12.1405, 46.12.1407, 46.12.1409, 46.12.1411, 46.12.1413, 46.12.1417, 46.12.1426, 46.12.1429, 46.12.1432, 46.12.1436, 46.12.1439, 46.12.1442, 46.12.1445, 46.12.1448, 46.12.1451, 46.12.1454, 46.12.1457, 46.12.1463, 46.12.1469, 46.12.1475 and 46.12.1481 and the repeal of rules 46.12.1402, 46.12.1406, 46.12.1408, 46.12.1412, 46.12.1415, 46.12.1419, 46.12.1425, 46.12.1427, 46.12.1428, 46.12.1430, 46.12.1431, 46.12.1433, 46.12.1435, 46.12.1437, 46.12.1438, 46.12.1440, 46.12.1441, 46.12.1443, 46.12.1444, 46.12.1446, 46.12.1447, 46.12.1449, 46.12.1450, 46.12.1452, 46.12.1453, 46.12.1455, 46.12.1456, 46.12.1458, 46.12.1462, 46.12.1464, 46.12.1468, 46.12.1470, 46.12.1474, 46.12.1476, 46.12.1480 and 46.12.1482 pertaining to the home and community-based services program	)	NOTICE OF ADOPTION, AMENDMENT AND TRANSFER AND REPEAL

TO: All Interested Persons

1. On February 10, 2000, the Department of Public Health and Human Services published notice of the proposed adoption, amendment and transfer and repeal of the above-stated rules at page 296 of the 2000 Montana Administrative Register, issue number 3.

2. The Department has amended and transferred rules 46.12.1401 [37.40.1401], 46.12.1432 [37.40.1445], 46.12.1436 [37.40.1448], 46.12.1439 [37.40.1451], 46.12.1442 [37.40.1460], 46.12.1445 [37.40.1461], 46.12.1454 [37.40.1488], 46.12.1457

[37.40.1476], 46.12.1463 [37.40.1464] and 46.12.1475 [37.40.1463].

3. The Department has repealed rules 46.12.1402, 46.12.1406, 46.12.1408, 46.12.1412, 46.12.1415, 46.12.1419, 46.12.1425, 46.12.1427, 46.12.1428, 46.12.1430, 46.12.1431, 46.12.1433, 46.12.1435, 46.12.1437, 46.12.1438, 46.12.1440, 46.12.1441, 46.12.1443, 46.12.1444, 46.12.1446, 46.12.1447, 46.12.1449, 46.12.1450, 46.12.1452, 46.12.1453, 46.12.1455, 46.12.1456, 46.12.1458, 46.12.1462, 46.12.1464, 46.12.1468, 46.12.1470, 46.12.1474, 46.12.1476, 46.12.1480 and 46.12.1482 as proposed.

4. The Department has adopted the rules IV (37.40.1465), VI (37.40.1467) and IX (37.40.1438) as proposed.

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

[RULE I] 37.40. 1415 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: REIMBURSEMENT (1) through (9) remain as proposed.

(10) Reimbursement is not available for the provision of services to other members of a recipient's household or family unless specifically provided for in these rules.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-6-101, 53-6-111, 53-6-113 and 53-6-402, MCA

[RULE II] 37.40.1435 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: ADULT RESIDENTIAL CARE, REQUIREMENTS (1) Adult residential care is the provision of supportive services to a recipient residing in ~~a licensed~~ an adult foster home, a residential hospice, or a personal care facility.

(2) through (4)(f) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-6-402, MCA

[RULE III] 37.40.1449 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: SPECIALLY TRAINED ATTENDANT CARE, REQUIREMENTS (1) through (3) remain as proposed.

~~(4) This service must be prior authorized by the department.~~

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-6-402, MCA

[RULE V] 37.40.1466 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: CHEMICAL DEPENDENCY

COUNSELING, REQUIREMENTS (1) and (2) remain as proposed.

(3) A person providing chemical dependency counseling services for a recipient with brain injury~~,~~ must be a state certified chemical dependency counselor who has received training in the needs of persons with brain injury and the provision of brain injury services. The counselor must provide proof of such training in the form of a training certificate or diploma.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-6-402, MCA

[RULE VII] 37.40.1446 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: COMPREHENSIVE DAY TREATMENT, REQUIREMENTS (1) through (3) remain as proposed.

(4) ~~The provision of~~ An entity providing comprehensive day treatment services must be ~~provided by a provider~~ under the direction of an interdisciplinary team consisting of a licensed psychologist, a licensed neuropsychologist, a board certified physiatrist, therapists and other appropriate support staff.

(5) and (6) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-6-402, MCA

[RULE VIII] 37.40.1437 HOME AND COMMUNITY-BASED SERVICES TREATMENT FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: COMMUNITY RESIDENTIAL REHABILITATION, REQUIREMENTS

(1) Community residential rehabilitation is the provision of 24 hour care to a recipient in both a comprehensive day treatment setting as specified in ARM 37.40.1446 and ~~a~~ in one of the following supervised residential settings: an adult foster home or a personal care facility.

(2) remains as proposed.

(3) An entity providing community residential rehabilitation must meet the requirements of ARM 37.40.1435 and 37.40.1446.

(4) remains as proposed.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-6-402, MCA

[RULE X] 37.40.1452 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: SPECIALIZED CHILD CARE FOR CHILDREN WITH AIDS, REQUIREMENTS (1) Specialized child care for children with AIDS is the provision of day care, respite care, and other direct and supportive care to a recipient under ~~19~~ 18 years of age who is HIV positive or has a diagnosis of AIDS and who, due to medical and other needs, cannot be served through traditional child care settings.

(2) through (3)(c) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-6-402, MCA

[RULE XI] 37.40.1487 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: SPECIALIZED MEDICAL EQUIPMENT AND SUPPLIES, REQUIREMENTS (1) through (5)(c) remain as proposed.

(d) educational items including computers, software, and books~~,~~ unless such items are purchased in conjunction with an environmental control unit.

(6) through (7)(c) remain as proposed.

(8) Supplies necessary for the performance of a service animal may include, but are not limited to, leashes, harness, backpack, and mobility ~~care~~ cart when the supplies are specifically related to the performance of the service animal to meet the specific needs of the recipient. Supplies do not include food to maintain the service animals.

(9) through (11) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-6-402, MCA

6. The Department has amended and transferred the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

46.12.1403 [~~37.40.1405~~ 37.40.1408] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: ENROLLMENT (1) through (5)(n) remain as proposed.

(o) appropriateness for the person, given the person's current needs and risks, of services available through the program;

(p) through (6)(d) remain as proposed.

(e) a determination by the case management team that the service providers necessary to the delivery of services as provided for in the plan of care are unavailable; ~~or~~ and

(f) remains as proposed.

AUTH: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-113, 53-6-131 and 53-6-402, MCA

46.12.1404 [37.40.1406] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: SERVICES

(1) through (4)(c) remain as proposed.

(d) a necessary ancillary service is no longer available; ~~or~~ and

(e) through (5) remain as proposed.

(6) The following services, as defined in these rules, may be provided through the program:

(a) through (7) remain as proposed.

(a) room and board; ~~or~~ and

(b) and (8) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101 and 53-6-402, MCA

46.12.1405 [37.40.1407] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: GENERAL REQUIREMENTS (1) through (4) remain as proposed.

(5) A provider may also provide support to other family members in the recipient's household during hours of program reimbursed service if approved by the case management team ~~after a determination that the needs of the recipient can safely be met under this arrangement~~.

AUTH: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101 and 53-6-402, MCA

46.12.1407 [37.40.1430] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: CASE MANAGEMENT, REQUIREMENTS (1) remains as proposed.

(2) Case management services ~~may~~ includes:

(a) through (4)(e) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101 and 53-6-402, MCA

46.12.1409 [37.40.1420] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: PLANS OF CARE (1) A plan of care is a written plan of supports and interventions based on an assessment of the status and needs of a recipient~~, that~~. The plan of care describes the needs of the recipient and the services available through the program and otherwise ~~which~~ that are to be made available to the recipient in order to maintain the recipient at home and in the community.

(2) The services that a recipient may receive through the program and the amount, scope and duration of those services must be specifically authorized in writing through an individual plan of care for the person.

(3) through (8)(c) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101 and 53-6-402, MCA

46.12.1411 [37.40.1421] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: COST OF PLAN OF CARE (1) remains as proposed.

(2) The total annual cost of services for each recipient, except as provided in (3), may not exceed a maximum amount set by the department based on the number of recipients and the amount of monies available to the program as authorized in appropriation by the legislature.

(3) The total cost of services provided under a plan of care to a recipient may exceed the maximum amount set by the department ~~only~~ if authorized by the department~~,~~ based on the department's determination that one or more of the following circumstances is applicable:

(a) through (b)(ii) remain as proposed.

(iii) prevent institutionalization during the absence of the normal caregiver~~.~~;

(c) remains as proposed.

(d) the recipient has long term needs that result in the maximum amount being exceeded in minor amounts at various times.

(4) and (5) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101 and 53-6-402, MCA

46.12.1413 [37.40.1426] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: NOTICE AND FAIR HEARING (1) through (2) remain as proposed.

(3) A person aggrieved by any adverse final determinations as listed in (1)(a) through (1)(d) or any adverse determinations regarding services in the plan of care may request a fair hearing as provided in ~~[Rule XVII], [Rule XVIII], and~~ ARM ~~46.2.201~~ 37.5.304, ~~46.2.202~~ 37.5.307, ~~46.2.205 through 46.2.212 and 46.2.214~~ 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

(4) Fair hearings will be conducted as provided for in ~~[Rule XVII], [Rule XVIII], and~~ ARM ~~46.2.201~~ 37.5.304, ~~46.2.202~~ 37.5.307, ~~46.2.205 through 46.2.212 and 46.2.214~~ 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101 and 53-6-402, MCA

46.12.1417 [37.40.1485] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: ENVIRONMENTAL ACCESSIBILITY ADAPTATION, REQUIREMENTS (1) through (4)(b) remain as proposed.

~~(5) This service must be prior authorized by the department.~~

(6) and (7) remain as proposed but are renumbered (5) and (6).

AUTH: Sec. 53-2-201, 53-6-101 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101 and 53-6-402, MCA

46.12.1426 [37.40.1450] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: HOMEMAKING, REQUIREMENTS (1) and (2) remain as proposed.

(a) household management services consisting of assistance with those activities necessary for maintaining and operating a home and may include assisting the recipient in finding and relocating into other housing;

(b) through (4) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101 and 53-6-402, MCA

46.12.1429 [~~37.40.1436~~ 37.40.1447] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: PERSONAL ASSISTANCE, REQUIREMENTS (1) Personal assistance is

the provision of an array of personal care and other services to a recipient for the purpose of meeting personal needs in the home and the community ~~by a provider enrolled in the medicaid program as a personal assistance provider~~.

(2) through (4) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-141 and 53-6-402, MCA

46.12.1448 [37.40.1462] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: SPEECH PATHOLOGY AND AUDIOLOGY, REQUIREMENTS (1) through (1)(j)(iii) remain as proposed.

(2) The requirements for the delivery of speech therapy services ~~are~~ at ARM ~~46.12.526A~~ 37.86.605 and ~~46.12.527A~~ 37.86.606 and for audiology services at ARM ~~46.12.533~~ 37.86.701 and ~~46.12.534~~ 37.86.702 govern the provision of speech pathology and audiology services.

(3) remains as proposed.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-141 and 53-6-402, MCA

46.12.1451 [37.40.1486] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: PERSONAL EMERGENCY RESPONSE SYSTEMS, REQUIREMENTS (1) remains as proposed.

(2) A personal emergency response system must be connected to a local emergency response ~~system~~ unit with the capacity to activate emergency medical personnel.

(3) remains as proposed.

AUTH: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-141 and 53-6-402, MCA

46.12.1469 [37.40.1477] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: NURSING, REQUIREMENTS (1) remains as proposed.

~~(2) Nursing services may not be provided to a recipient residing in a hospital, or nursing facility.~~

AUTH: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-141 and 53-6-402, MCA

46.12.1481 [37.40.1475] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: DIETETIC SERVICES, REQUIREMENTS (1) through (3) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-101, ~~53-6-111~~, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101, ~~53-6-111~~, 53-6-141 and 53-6-402, MCA

7. The Department has made changes to several of the rules upon final adoption. Many of the changes were matters of

correcting grammatical and textual mistakes in the rules as proposed.

Those changes that were of some substance are the following:

Rule 37.40.1406 (formerly 46.12.1404) "SERVICES"

The language "as defined in these rules", included in subsection (6) upon adoption, is intended to give more explicit notice that the services available through the program are limited to those services as expressly defined in the rules. This additional language does not substantively change the nature of these services.

Rule 37.40.1407 (formerly 46.12.1405) "GENERAL REQUIREMENTS"

The existing criteria in subsection (5), limiting the provision of support services for family members to those circumstances in which the needs of the recipient can be safely met under this arrangement, has been deleted upon adoption. The Department determined that in the course of plan of care development, the planning team considers many factors in determining when service provision is necessary and appropriate. This particular criteria should not be expressly stated and thereby appear to exclude other possibly equally important criteria for consideration.

Rule 37.40.1408 (formerly 46.12.1403) "ENROLLMENT"

This rule in the first notice was originally proposed for redesignation as ARM 37.40.1405. The redesignation has been changed in order to place the rule so as to have more than one unused rule number immediately adjacent to it. This will allow for future use of additional rules for purposes of enrollment and selection provisions if necessary.

Rule 37.40.1409 (formerly 46.12.1420) "PLANS OF CARE"

The language "through the program" has been added upon adoption to subsection (2). This language clarifies that the provision of services from other sources than the services funded through the home and community services program need not be specifically authorized in writing through the plan of care. While the plan of care is intended to provide a comprehensive planning process for effective coordination of all services a person may receive, the mandatory aspects of the plan of care are only applicable to the services to be derived through the home and community services program.

Rule 37.40.1411 (formerly 46.12.1421) "COST OF PLAN OF CARE"

The language "at various times" has been added upon adoption to subsection (3)(d). Subsection (3) defines those circumstances in which the Department will allow the total cost for a plan of

care to exceed the established maximum for plans of care. The language modifies the stated circumstance allowing the maximum to be exceeded in minor amounts. The language clarifies that this circumstance is not one of a singular event of minor excess but may be inclusive of minor excess occurring over time. This circumstance is not uncommon and generally need not result in significant excess cost in meeting the service needs of the person under the plan of care. Many persons who over time can be served through the program effectively and generally within the maximum would be excluded from the program in the absence of this criteria. It is therefore an acceptable circumstance generally for allowing the cost to exceed.

Rule 37.40.1415 (Proposed Rule I) "REIMBURSEMENT"

A new subsection, (10), has been added to the rule upon adoption. The new provision states that reimbursement is not available for the provision of services to other members of recipient's household or family unless specifically provided for in these rules. This new provision does not substantively change reimbursement as currently available through rule, policy, or practice. This provision has been added to give the public and recipients more explicit notice of this existing limitation upon reimbursement for the provision of services by persons who are closely related or connected to a recipient.

Rule 37.40.1426 (formerly 46.12.1413) "NOTICE AND FAIR HEARING"

The rule as adopted does not include the references to the proposed Rules XVII and XVIII appearing in another notice of proposed rule adoption that concerned fair hearing rules for the Department generally. These references were inadvertently included in the proposed rule. The two referenced proposed rules, while now adopted, do not pertain to appeals that would occur under the home and community services program.

Rule 37.40.1435 (Proposed Rule II) "ADULT RESIDENTIAL CARE: REQUIREMENTS"

Upon adoption, the word "licensed" has been removed as a modifier of adult foster home, a residential hospice or a personal care facility in the subsection (1). The term is unneeded in this rule or any particular service related rule since the requirement for compliance with licensing laws is generally stated in ARM 37.40.1407.

Rule 37.40.1437 (Proposed Rule VIII) "COMMUNITY RESIDENTIAL REHABILITATION: REQUIREMENTS"

Upon rule adoption additional language has been added to subsection (1) specifying that supervised residential settings are inclusive of an adult foster home or a personal care facility. This additional language does not substantively change the nature of this service. This language has been added to

give the public and recipients more explicit notice of the licensed service settings that constitute the residential component of this comprehensive service.

Subsection (2), upon adoption of this rule includes a reference to ARM 37.40.1435 (Proposed Rule II) in addition to ARM 37.40.1446 (Proposed Rule VII) as providing requirements that are applicable to the provision of community residential rehabilitation services. This referential incorporation of these standards was inadvertently left out of the rule as proposed. The referenced standards are a necessary requirement of compliance since those are the standards expressed otherwise in these rules as being applicable to adult foster care and personal care facility settings which are the residential component of this comprehensive service.

Rule 37.40.1447 (formerly 46.12.1429) "PERSONAL ASSISTANCE: REQUIREMENTS"

This rule was in the first notice originally proposed for redesignation as ARM 37.40.1436. The redesignation has been changed in order to place the rule in a more appropriate location relative to similar individualized support services.

The language in subsection (1), as proposed, requiring that a provider be enrolled in the medicaid program as a personal assistance provider, has not been adopted. This requirement is unnecessary in that enrollment as a medicaid provider is a universal requirement for any provider of services funded with medicaid monies and is generally stated for the program in ARM 37.40.1405(1). Therefore there is no need to state the requirement in particular for each and any service.

Rule 37.40.1449 (Proposed Rule III) "ADULT RESIDENTIAL CARE: REQUIREMENTS"

Proposed subsection (4), requiring prior authorization by the Department for this service has not been adopted. The Department determined that the general imposition of this requirement is inapplicable in relation to this service.

Rule 37.40.1452 (Proposed Rule X) "SPECIALIZED CHILD CARE FOR CHILDREN WITH AIDS: REQUIREMENTS"

Upon rule adoption the age of coverage for specialized child care of children with AIDS, expressed in subsection (1), was changed from 19 years of age to 18 years of age. The age of coverage for the service was inadvertently misstated in the rule as proposed.

Rule 37.40.1477 (formerly 46.12.1469) "NURSING: REQUIREMENTS"

The rule, as adopted, does not contain the existing provision of subsection (2) that expressly prohibited the provision of

nursing services under the program in a hospital or nursing facility setting. This provision has been removed since a person residing in a hospital or nursing facility may not enroll in the program as provided for in ARM 37.40.1405(2) and hospital services and long term nursing facility settings are not specified in ARM 37.40.1406 as service settings for purposes of the program.

Rule 37.40.1485 (formerly 46.12.1426) "ENVIRONMENTAL ACCESSIBILITY ADAPTATION: REQUIREMENTS"

Proposed subsection (5), requiring prior authorization by the Department for this service has not been adopted. The Department determined that the general imposition of this requirement is inapplicable in relation to this service.

Rule 37.40.1486 (formerly 46.12.1451) "PERSONAL EMERGENCY RESPONSE SYSTEMS: REQUIREMENTS"

In subsection (2), as proposed, the term "medical alert systems" was replaced with the term "personal emergency response system". This personal system in turn must be connected to a local emergency response unit representing an infrastructure for response to emergencies. The existing text had used the term "local emergency response system" to describe that infrastructure. The correct terminology for the infrastructure is "local emergency response unit". Consequently, the provision as adopted includes the correct terminology for the emergency response infrastructure.

Rule 37.40.1487 (Proposed Rule XI) "SPECIALIZED MEDICAL EQUIPMENT AND SUPPLIES: REQUIREMENTS"

Upon rule adoption the term in subsection (8), relating to the purchase of supplies for a service animal was changed from "mobility care" to "mobility cart". The use of the term "mobility care" was an inadvertent mistake since the correct term is "mobility cart".

8. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State July 17, 2000.

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

In the matter of the adoption of Rule I and the amendment of ARM 37.86.2901 and 37.86.2905 pertaining to inpatient hospital services reimbursement rates	))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On May 25, 2000, the Department of Public Health and Human Services published notice of the proposed adoption and amendment of the above-stated rules at page 1301 of the 2000 Montana Administrative Register, issue number 10.

2. The Department has amended rules 37.86.2901 and 37.86.2905 as proposed.

3. The Department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

[RULE I] 37.86.2910 INPATIENT HOSPITAL SERVICES, QUALIFIED RATE ADJUSTMENT PAYMENT, ELIGIBILITY AND COMPUTATION

(1) through (2) remain as proposed.

(3) The department will calculate the amount of the qualified rate adjustment payment for each eligible rural hospital using the hospital's most recent submitted cost report and paid claims data. The qualified rate adjustment payment for each eligible rural hospital shall be the lesser of:

~~(a) the hospital's usual and customary (billed) charges;~~

(b) and (c) remain as proposed but are renumbered (a) and (b).

(4) The department will pay the qualified rate adjustment only to inpatient hospitals that choose reimbursement on a prospective basis for the period June 1, 2000 through June ~~31~~ 30, 2001 and such payments shall not be subject to the cost settlement process.

(a) Reimbursement on a prospective basis will remain in effect during the contract period.

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

4. The Department changed the catchphrase of [Rule I] (37.86.2910) so that it would be consistent with the Department's other inpatient hospital rules. The Department also deleted language in (3)(a) that it feels is unnecessary. A clerical error in the date in (4) was also corrected. To make it clear that reimbursement basis may not be changed while the

qualified rate adjustment is in effect, the Department added (4)(a).

5. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State July 17, 2000.

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

In the matter of the amendment of ARM 37.88.1401, 37.88.1402, 37.88.1405 and 37.88.1410 pertaining to reimbursement for institutions for mental diseases	)))))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On June 15, 2000, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1491 of the 2000 Montana Administrative Register, issue number 11.

2. The Department has amended rules 37.88.1401, 37.88.1402, 37.88.1405 and 37.88.1410 as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State July 17, 2000.

**BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA**

In the Matter of the Adoption of New Rules Pertaining to Protective Orders and Protection of Confidential Information	))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On April 13, 2000, the Department of Public Service Regulation, Public Service Commission (PSC) published notice of public hearing on the proposed adoption of new rules I through XX, concerning protective orders and protection of confidential information, at page 939 of the 2000 Montana Administrative Register, issue number 7.

2. The PSC has adopted new rules III, IV, VIII, and X through XX exactly as proposed:

RULE III. (38.2.5003) PROTECTION OF INFORMATION -- "90-DAY RULE"
AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE IV. (38.2.5027) PUBLIC ACCESS TO CONFIDENTIAL INFORMATION (Alternative B)
AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE VIII. (38.2.5010) PROTECTIVE ORDER -- EXTENSION TO ADDITIONAL INFORMATION, EXTENSION TO OTHER PROVIDERS
AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE X. (38.2.5014) PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- GENERAL
AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XI. (38.2.5015) PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- IDENTIFICATION OF CONFIDENTIAL INFORMATION
AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XII. (38.2.5016) PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- PROVIDING CONFIDENTIAL INFORMATION -- NON-CONFIDENTIAL WRITTEN SUMMARY
AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XIII. (38.2.5017) PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- PROVIDING CONFIDENTIAL INFORMATION -- GENERAL

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XIV. (38.2.5020) PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- MAINTENANCE AND USE OF CONFIDENTIAL INFORMATION -- GENERAL
AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XV. (38.2.5021) PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- USE OF CONFIDENTIAL INFORMATION -- GENERAL
AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XVI. (38.2.5022) PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- ACCESS AND MAINTENANCE OF CONFIDENTIAL INFORMATION -- COMMISSION AND CONSUMER COUNSEL
AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XVII. (38.2.5023) PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- ACCESS AND MAINTENANCE OF CONFIDENTIAL INFORMATION -- PARTIES
AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XVIII. (38.2.5024) PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- ACCESS AND MAINTENANCE OF CONFIDENTIAL INFORMATION -- EMPLOYEE EXPERTS OF PARTIES
AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XIX. (38.2.5028) PROTECTIVE ORDER -- STANDARD TERMS AND CONDITIONS -- ACCESS AND MAINTENANCE OF CONFIDENTIAL INFORMATION -- PUBLIC
AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE XX. (38.2.5030) CONFIDENTIAL INFORMATION -- REMOVAL OF PROTECTION, RETURN TO PROVIDER (Alternative A)
AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

3. The PSC has adopted new rules I, II, V through VII, and IX as proposed, but with the following changes (stricken matter interlined, new matter underlined):

RULE I. (38.2.5001) DEFINITIONS Terminology used in these rules shall have the following meanings, except where the context otherwise clearly demands:

(1) "Confidential information" generally means information which includes, or is claimed to include, the required elements of a law which allows for limitations on public disclosure or access by others, but in context of these rules it means

information the commission has identified, either specifically, by category, or generally, as being subject to protection from disclosure in accordance with a protective order and these rules;

(2) through (5) same as proposed.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE II. (38.2.5002) PROTECTIVE ORDERS AND RULES -- RELATIONSHIP, WAIVER, SPECIAL PROVISIONS, PROVIDER DISCRETION, INAPPLICABILITY

(1) through (4) same as proposed.

(5) Except as the commission may otherwise order, access to information, whether through protective orders and these rules or otherwise, will not be available in regard to information lawfully protected ~~on request~~, temporarily or permanently as the law may permit, in regard to matters such as the identity of an informant or ~~the identity or other personal information of a~~ complainant, or when access to or disclosure of the information will ~~violate constitutionally-protected personal privacy,~~ create a risk of personal safety~~,~~ or impede law enforcement efforts.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE V. (38.2.5004) GENERIC PROTECTIVE ORDERS (1) The commission, in its discretion, ~~upon its own motion or the~~ on motion of a provider, may issue a "generic protective order," which is a protective order applicable to specified information or general categories of information expected to be supplied by a provider in certain specified or general categories of proceedings, compliance with reporting requirements, response to certain inquiries, or other matters, for a period of time (e.g., term of years) rather than by specific proceeding. The generic protective order and these rules govern access to confidential information provided under the generic protective order.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE VI. (38.2.5007) PROTECTIVE ORDER -- REQUESTS AND TIMING OF REQUESTS (1) through (3) same as proposed.

(4) In the interests of preventing delays in proceedings, the commission encourages providers to make requests ~~Requests~~ for protection of confidential information ~~should be made by the providing party~~ at the earliest possible time in a proceeding, including in anticipation of a proceeding, ~~in which~~ if the provider has reason to believe that confidential information will be submitted or is likely to be requested.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE VII. (38.2.5008) PROTECTIVE ORDER -- ISSUANCE, RECONSIDERATION, CHALLENGE TO CONFIDENTIALITY (1) same as proposed.

(2) Reconsideration of issuance of a protective order is

~~generally~~ not allowed~~, but not in regard to a determination that the information is or appears to be protectible~~. Challenges to a commission determination that information is or appears to be protectible shall be in accordance with (3).

(3) same as proposed.

(4) Alternative B adopted as proposed with the following changes:

(4) The burden of demonstrating that information, which the commission has determined appears to be information entitled to protection or appears to be within a category of information entitled to protection and has therefore designated as confidential information, is entitled to protection shall be on the provider.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

RULE IX. (38.2.5012) NONDISCLOSURE AGREEMENTS -- GENERAL

(1) same as proposed.

(2) Commissioners and commission staff ~~may~~ shall sign a "commission nondisclosure agreement" which must certify, permanently and for all confidential information in all proceedings before the commission, in substantial compliance with the following:

"I understand that in my capacity as commissioner or commission staff, I may be called upon to access, review, and analyze, directly or through reports directed to me, information that is protected as confidential information. I have reviewed all commission rules applicable to protection of confidential information and I am familiar with the standard terms and conditions of protective orders issued by the commission. I understand and will abide by my obligations in regard to confidential information.

"I agree that I will use confidential information only for commission purposes and I will discuss and disclose confidential information only with the provider and persons, including commissioners and commission personnel, having also signed a nondisclosure agreement. I agree to be bound by the terms and conditions of protective orders and these rules. I will neither use nor disclose protected information except for lawful purposes in accordance with the governing protective order and these rules so long as such information remains protected.

"I understand that this nondisclosure agreement may become part of my permanent personnel file and the files of the division to which I am assigned and may be freely copied and distributed to other files and persons having interest in it, including the provider and other parties in proceedings before the commission."

(3) Counsel, expert witnesses, and others entitled to access confidential information for parties to a proceeding in which information has been designated as confidential and a protective order has been issued ~~must~~ shall sign and file with the commission and serve on the provider a nondisclosure agreement applicable to the proceeding, certifying in

substantial compliance with the following:

"I understand that in my capacity as counsel or expert witness for a party to this proceeding before the commission, or as a person otherwise lawfully so entitled, I may be called upon to access, review, and analyze information which is protected as confidential information. I have reviewed all commission rules and protective orders governing the protected information that I am entitled to receive. I fully understand, and agree to comply with and be bound by, the terms and conditions thereof. I will neither use nor disclose confidential information except for lawful purposes in accordance with the governing protective order and commission rules so long as such information remains protected.

"I understand that this nondisclosure agreement may be copied and distributed to any person having an interest in it and that it may be retained at the offices of the provider, commission, consumer counsel, any party and may be further and freely distributed."

(4) Nondisclosure agreements ~~shall~~ must include the name, employer, and business address of the person signing and the name of the party represented by the person.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

4. The following rule is amended to eliminate a conflict resulting from post-comment modifications of proposed new rule VII:

38.2.4806 RECONSIDERATION (1) through (6) remain the same.

(7) Reconsideration is not available in regard to the granting of a motion for protective order.

AUTH: 69-3-103, MCA
IMP: 69-2-101, MCA

5. The following comments were received and appear with the PSC's responses:

COMMENT 1: In regard to rule I, the Montana Consumer Counsel (MCC) suggests that the definition of "confidential information" be clarified to exclude information that has previously been made public. Montana-Dakota Utilities Co. (MDU) comments that the proposed definition of "confidential information" is inappropriate because whether information is trade secret depends on the intent and conduct of the provider and whether information is private depends on the expectations of the provider. US WEST Communications, Inc.'s (USWC) comments parallel MDU's.

RESPONSE: MDU's and USWC's comments might be appropriate if the definition were to have general applicability, but it does not. The definition is specific to the context of these rules and PSC protective orders, and in that context the definition is correct (i.e., information will be confidential information for purposes of protective orders and these rules

when the PSC so declares). MCC's comment would be appropriate if these rules were attempting to codify the factors the PSC will consider when determining whether information is confidential, but the PSC is not doing that. Whether information can be declared confidential information will still be determined by looking to laws applicable, including laws which do not allow protection if the information is otherwise publicly available. However, the rule is modified to make it more clear on both these points. Commissioner Rowe dissents, suggesting that the PSC more specifically incorporate modifications to reflect MCC's comments.

COMMENT 2: In regard to rule II, MDU comments that (5) should be deleted because it detracts from the clarity of the remainder of the rules and is legally incorrect in that the identity of a person who complains to the commission can be treated as confidential. USWC's comments are essentially the same as MDU's.

RESPONSE: The proposed rule is modified to reflect that the PSC will not be declaring the referenced information confidential through this rule, but to note that if the identified information can lawfully be treated as confidential it may be maintained as such by the PSC and not be accessible.

COMMENT 3: In regard to rule III, MDU comments that neither an individual commissioner nor commission staff may make a determination that information will be treated as confidential information. In MDU's view only a majority of a quorum of the commissioners can make that determination. USWC's comments agree with MDU's.

RESPONSE: The PSC disagrees. In context, the action is delegable. Delegation is necessary because information could be obtained by the PSC or filed with the PSC under circumstances that demand immediate treatment of the information as confidential information. The PSC itself might not be able to convene a meeting to decide the matter in a timely fashion. It is essential that a preliminary determination is available pending the PSC itself being able to consider the matter.

COMMENT 4: In regard to rule IV, MDU comments that neither alternative A nor alternative B should be adopted because allowance of non-party access to confidential information, which only comes before the PSC as needed for performance of PSC official duties, is contrary to the underlying legal bases for protective orders. USWC agrees. In regard to rule XIX (the procedure for implementing rule IV) MDU repeats the argument.

RESPONSE: The PSC disagrees with the comments and adopts Alternative B of rule IV and the procedure set forth in rule XIX. The basis for PSC protective orders is Mountain States, 94 Mont. 277, 634 P.2d 181 (1981), which includes a provision explaining that, in accordance with the Court's decision, the utility can hold and enjoy its private property, the consumer counsel, representing the consuming public, may have access to the information, and "[a]ny other citizen, under our order, may

also have access to the trade secret, provided his or her interest relates to the ratemaking function of the PSC." Id. 634 P.2d at 189. Therefore, in the PSC's view, Mountain States envisions that the public may have access to confidential information, subject to protective order provisions.

COMMENT 5: In regard to rule V, MDU comments that a protective order should only issue upon motion of a provider and any issuance on the PSC's own motion would be adjudication of rights without process to those affected. USWC suggests the same thing as MDU.

RESPONSE: Although not necessarily agreeing with the arguments presented, the rule has been modified accordingly.

COMMENT 6: In regard to rule VI, MDU recommends that (3)(b) be deleted because it cannot be known what information will be protected in advance of certain procedures on the matter, like discovery. USWC comments that (3)(b) would require protective orders to be requested on a case-by-case basis, which is inefficient. USWC suggests that item-by-item identification would only be necessary in regard to challenges to confidentiality. USWC recommends that (3)(b) be stricken. MDU also recommends that (4) should be deleted because it will cause friction, is unenforceable, and protective orders are not needed until there is a proceeding and something in that proceeding to protect. USWC is opposed to any timing requirement, like included in (4), and views such requirements as being invasive and requiring disclosure of proceedings which are only anticipated.

RESPONSE: Regarding the comments directed at (3)(b), the PSC disagrees. Utilities have or should have a fairly good idea of the information that will need to be protected in any given proceeding. To the extent that later-requested information was not anticipated by the utility, the utility can then identify the information and request protection under the existing protective order. In part the PSC agrees with the comments pertaining to (4) and modifies it to clarify that the timing provisions are a preference, not a mandate.

COMMENT 7: In regard to rule VII, MDU comments that (2) should specify that issuance of a protective order is not subject to reconsideration, otherwise no provider could safely provide the information. In MDU's view a determination that information is or is not protectible should be subject to reconsideration so long as the provider is protected pending reconsideration and litigation on the determination. USWC's comments parallel MDU's in regard to (2) stating the reverse of what should be stated. MCC comments that the proposed rules seem to suggest that there will be an affirmative determination by the PSC that information is confidential, which departs from previous practice and, under these circumstances, there may be no opportunity for the public to review or access information and therefore the burden should be on the provider to demonstrate that the information is confidential and the PSC

should adopt alternative B of (4). MDU comments that alternative A of (4) must be the alternative adopted, as the challenging party will have the information, albeit protected, will know the basis for the provider's claim, and is the only one who will know the basis for objection. MDU believes that if the burden is on the providing party, objections would routinely be filed for strategic reasons. USWC also argues that (4), alternative A, must be the one adopted by the PSC.

RESPONSE: Pertaining to (2) (reconsideration of a protective order), the PSC agrees with MDU and USWC, in part, and believes the best course of action is simply to not allow reconsideration of a grant of a motion for a protective order. The challenge mechanism is sufficient. The rule is amended accordingly. For the purpose of preventing a conflict between rules, ARM 38.2.4806, a PSC procedural rule on reconsideration, also is amended to include the exception for protective orders. In regard to (4), the PSC adopts alternative B. Under these proposed protective order rules, as has been the case in regard to previous PSC consideration of motions for protective orders, the PSC will not be making an affirmative determination that information is confidential, but only a determination that the information appears to be entitled to protection. Although the PSC agrees with MDU and USWC that the party initiating a legal challenge to something (e.g., confidentiality or information) generally has the burden, in the normal protective order process providers moving for protection rarely, if ever, face opposition prior to the PSC's determination and therefore have carried no burden on the matter, and should be required to do so if challenged. Commissioners Fisher and Feland dissent from adoption of the alternative B.

COMMENT 8: In regard to proposed new rule IX, MDU views (2) as being permissive, which is the same as having no rule, and suggests that commissioners and staff be required to sign a nondisclosure agreement. USWC's comments are the same as MDU's.

RESPONSE: For the most part the PSC agrees and amends the rule accordingly.

COMMENT 9: In regard to rule XII, MDU comments that this rule should not apply to information being supplied in response to discovery. MDU suggests that summaries to discovery information are time consuming and an unnecessary burden because responses are seldom used in a proceeding in any manner justifying a summary. USWC's comments are the same as MDU's.

RESPONSE: The PSC disagrees. Responses to discovery are frequently used in PSC analyses and discussion and non-confidential summaries of such protected information, including responses to discovery, greatly simplify management and processing the information.

COMMENT 10: In regard to rule XVII, MDU comments that there needs to be a provision where access by an expert is not automatic, but occurs only after an opportunity for the provider to object. USWC agrees with MDU and also suggests that there be

a provision precluding or limiting access by experts who have had problems appropriately maintaining confidential information before the PSC or elsewhere.

RESPONSE: A procedure for objection to an expert's access to information exists in some pre-rule PSC protective orders. The procedure likely originated when the PSC began to allow in-house expert access to confidential information in telecommunication cases (see following comment and response). The objection process is not a required element of the Mountain States basis for PSC protective orders. The PSC determines that the process, which could be time-consuming in time-sensitive cases, is not an essential element in instances where access is by persons identified in Mountain States as persons who are to have access.

COMMENT 11: In regard to rule XVIII, MDU notes that among different types of utilities there is a distinct difference of opinion regarding a prohibition on in-house experts accessing confidential information. MDU suggests that prohibition is the best approach, is the way case law mandating protection designed allowable access, and is the only effective way of protecting the information.

RESPONSE: The PSC determines that it will adopt the proposed rule. The idea that in-house experts should be able to access confidential information apparently came about in PSC telecommunications cases during the 1980s and has been applied in such cases, and maybe others, since that time. The concept is apparently attractive to some applicants and intervenors because in-house experts are readily available without additional expense, even though both sides to the issues likely recognized that there could be risk regarding confidential information being perfectly safeguarded. The PSC determines that, with the procedure for objection to in-house-expert access, along with the usual procedures, such as the signing of the non-disclosure agreement, the risk does not outweigh the benefits.

COMMENT 12: In regard to rule XX, MDU comments that alternative B is unsound and beyond the authority of the PSC. USWC agrees with MDU and suggests that there is no legal time frame which limits the duration of confidentiality, which would be governed by the nature of the information itself.

RESPONSE: Although the PSC does not necessarily agree with all of the comments submitted on this proposed rule, the PSC agrees that alternative A should be the alternative adopted.

/s/ Dave Fisher
Dave Fisher, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE JULY 13, 2000.

**BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA**

In the Matter of the Amendment of a Rule Pertaining to the Meaning and Effect of the Landfill Closure Provision in Class D Motor Carrier Authorities	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 16, 2000, the Department of Public Service Regulation, Public Service Commission (PSC) published a notice of public hearing on the proposed amendment of ARM 38.3.130, concerning the landfill closure provision in Class D motor carrier authorities, at page 690 of the 2000 Montana Administrative Register, issue number 5.

2. The PSC has amended the rule as proposed using the alternative B amendment, but with the following changes (stricken matter interlined, new matter underlined):

38.3.130 MEANING AND EFFECT OF CLASS D LANDFILL CLOSURE PROVISION (1) and (2) remain the same.

(3) In Class D motor carrier authorities which include a required termination point the landfill closure provision allows continuation of the movement from the termination point to a certified landfill if the movement to the termination point is otherwise authorized by and executed in strict compliance with the underlying Class D authority and regardless of whether a landfill existed within the termination point at any time.

AUTH: 69-12-201, MCA
IMP: 69-12-201, MCA

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

COMMENT 1: The PSC received a number of comments from consumers who support the operations of a recent additional carrier in the Billings area and competition in the transportation of solid waste in general. Some of these persons also criticize the operations of an existing carrier in that area. To some extent the Montana Solid Waste Contractors (SWC) and Browning-Ferris Industries (BFI) also appear to view this rulemaking as being about an individual carrier and suggest that rulemaking is not a proper place to interpret individual permits, including for the reason that operating history of the carrier cannot be reviewed.

RESPONSE: The PSC appreciates the public interest and comments in this matter. However, although this rulemaking is prompted by a situation involving one Class D carrier, the rulemaking is not about any individual carrier and is not about the merits of competition in general or the quality of service

provided by any existing carrier. This rulemaking is about the proper meaning of certain terminology which exists in all, or almost all, Class D motor carrier authorities, a number of which include required termination points.

COMMENT 2: SWC and individual Class D carriers, including BFI, City-County Sanitation, Evergreen Disposal, Dillon Disposal, and Guilio Disposal Service support no rulemaking. These persons suggest that no rulemaking is necessary because the existing landfill closure rule already resolves the issue. BFI comments that the record used to develop the existing rule supports this view and comments or discussions to the contrary in that rulemaking are isolated. These persons support proposed alternative A, if the PSC determines any amendment is necessary.

RESPONSE: The PSC determines that amendment of the existing rule is necessary. There are significant differences of opinion regarding how the existing rule should apply to termination point authorities. The differences may be based in part on differing views of the meaning of the existing rule as written or the meaning of the existing rule as intended or supported by the underlying rulemaking record, regardless of how written. The PSC does not view that part of the record pertaining to the allowance that movements to a termination point could continue to a certified landfill as being isolated. The record reflects a clear discussion, with no apparent disagreement, that the existing rule would allow such movements. In any event the differences of opinion must be resolved and rulemaking is the most appropriate way to accomplish that.

COMMENT 3: BFI asks whether the alternatives proposed are confined to termination point authorities and whether the existing rule will apply to authorities which do not have termination points. City-County asks whether the alternatives apply to "to and from" authorities.

RESPONSE: Both alternatives are applicable only to termination-point authorities. Termination point authorities are authorities which include a required termination point, whether relating to the whole or a part of the movements authorized. Required termination points, depending on context of the underlying authority, could be expressed through use of terminology such as: "must terminate in [a point];" or "terminate" in "must originate or terminate in [a point];" or "to [a point];" or "to" in "to or from [a point]."

COMMENT 4: SWC argues that the proposed alternatives or at least alternative B will conflict with the existing rule.

RESPONSE: To the extent that a conflict between the existing rule and proposed alternative B exists, or is perceived to exist, the PSC modifies alternative B to clarify that continuation is allowed only when movements to the termination point are in accordance with the underlying authority and to clarify that the amendment is an exception to the existing rule's existence-of-a-landfill requirement. These appear to be the only points at which a conflict might exist.

COMMENT 5: BFI comments that the existing rule affirms longstanding PSC policy. BFI suggests that "termination" means exactly that in motor carrier authorities and the proposed amendments, particularly alternative B, redefine the term in a way that is contrary to the historical interpretation and industry understanding and reliance. BFI suggests that alternative B would revoke termination limitations in permits and upheave the existing system. SWC and some individual carriers agree with BFI. William O'Leary comments that alternative B would be contrary to traditional interpretation of termination points. O'Leary recommends that historical interpretations of "to and from" and "between" language should be retained and that it is a tenet of motor carrier law that transportation is confined to the geographical area identified in the underlying authority. SWC and some individual carriers suggest that alternative B will expand the scope of certain authorities. Dillon Disposal suggests that certificates should only be expanded or amended through contested case procedures. O'Leary comments that the landfill closure provision was not intended to grant additional operating authority, but was included only to address sanitation concerns. BFI comments that the only reason for the landfill closure provision is closure of landfills and public safety. BFI notes that some termination points in termination-point authorities never had landfills to close, so the landfill closure provision should not apply to them.

RESPONSE: The PSC disagrees that there is an historical interpretation of the landfill closure provision that governs the course of PSC action in this rulemaking. To the PSC's knowledge there was no formal PSC interpretation of the landfill closure provision until the existing landfill closure rule was adopted in October 1999 (effective January 2000). Activity on the subject appears to have been limited to staff-level discussions pertaining to requests for informal opinions, and there were few of those. Between 1990 and 1998 it appears that only two written informal staff opinions were issued, and those opinions conflict. However, staff opinions, written or oral, are informal and are not binding on the PSC. Any risk pertaining to informal opinions can be eliminated through a request for a formal ruling by the PSC via the declaratory ruling process.

Since the creation of the Class D motor carrier authority almost a quarter of a century ago (1977), most Class D authorities have included a provision which is commonly referred to as the "landfill closure provision." In its most common form the provision reads "carrier is allowed to transport authorized commodities to certified landfills from the territory authorized." The provision itself mentions nothing about landfill closure. By its own terms the provision only requires that the movement of garbage must be to a certified landfill and must be from the territory authorized, which, as determined through the PSC's enactment of the existing landfill closure rule, means all movements preceding the continuation to a certified landfill must be in strict and complete compliance with the terms and

conditions of the underlying authority.

In the PSC's view the landfill closure provision, from the time it was created to the present day, has affected Class D authorities in a significant way and assertions or assurances to the contrary would be incredible. However, neither the provision itself, the existing rule, nor the amendment adopted in this rulemaking expands authorities, except, as is self-evident from the terms of the provision itself, a carrier can transport garbage from the territory authorized to a certified landfill. A determination that the landfill closure provision allows movements to continue from a termination point to a certified landfill does not result in an expansion of the scope of any underlying authority. Termination points are within the territory authorized, the geographic area of the authority, and the scope of the underlying authority. Therefore, once a termination point has been reached, under the plain meaning of the landfill closure provision itself, the carrier is allowed to do exactly what the provision allows, which is to "transport authorized commodities to certified landfills from the territory authorized." The affected carrier can serve no areas not already authorized by the terms of the authority and the carrier must continue to abide by all requirements of the underlying authority before implementation of the landfill closure provision.

For the PSC to accept the contrary view it would have to determine that scope of authority is governed by what is physically possible (e.g., no dump in the termination point, so no authority to the termination point), not the terms of the underlying authority. However, the scope of Class D authority is not defined and has never been governed by what can be done physically, but what is allowed by the terms of the authority. At the time of issuance of (or spin-off to) Class D authorities, carriers received Class D authority equivalent to the entire underlying property authority, even if only a part of that authority had been used for transportation of garbage. Therefore, the scope of a Class D spin-off authority is normally identical to the property authority underlying it. The PSC is aware of nothing happening since creation of Class D authorities (e.g., application of use-it-or-lose-it provisions) and the landfill closure provision that would generally diminish scope of authorities as originally granted.

/s/ Dave Fisher
Dave Fisher, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE JULY 13, 2000.

**BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA**

In the matter of the adoption of a new rule to define search criteria for Uniform Commercial Code certified searches	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On March 30, 2000 the Secretary of State published notice of a public hearing on proposed adoption of the above-stated rule at page 818 of the 2000 Montana Administrative Register, Issue No. 6.

2. The Secretary of State has adopted the following rule as proposed with the following changes in the authority and implementing cites.

RULE I (44.6.201) DEFINING SEARCH CRITERIA FOR UNIFORM COMMERCIAL CODE CERTIFIED SEARCHES (1) through (6)(d) same as proposed.

AUTH: ~~30-9-421 and 30-9-546~~ 2-15-404 and 30-9-407, MCA
IMP: 30-9-403~~,~~ and ~~30-9-526, and 30-9-539~~ 30-9-421, MCA

The Secretary of State received the following comments; Secretary of State responses follow:

COMMENT 1: The Secretary of State is without rulemaking authority to adopt Rule I and cannot rely on Revised Article 9 (effective July 1, 2001) for such authority.

RESPONSE: The Secretary of State agrees that it cannot rely on Revised Article 9 of the Uniform Commercial Code for rulemaking until the Act is effective. The references to Revised Article 9 have been deleted as indicated by the interlined MCA cites listed as authority and inplementing sections above. However, there is authority under current Article 9, 30-9-407, MCA for the search criteria adopted.

COMMENT 2: The search criteria proposed limits a search too much, causing variant names to be missed, and violates the public's right to know under Section 9, Article II of the Montana Constitution.

RESPONSE: Even though the discretion of what name(s) to search has changed from the Secretary of State to the search requestor as a result of the adopted rule, there is no limit to names that can be searched. Those customers who have public access rights to the Secretary of State's system are not limited to the number of searches they may perform or the number of names that they want to search. For those who do not have public access, but contact the Secretary of State to

conduct a search, while charged for the first name requested, are not charged for variant name requests.

To illustrate, even though a search of "Robert Smith" will not reveal "Bob Smith" under an exact name search, the customer simply has to run another search entering the name "Bob Smith", or any other variation they choose. Indeed, if the customer does not want to run numerous searches, they can run a search for "Smith" and every debtor named Smith will appear on the search results. Nothing is denied the searching party.

COMMENT 3: There is no precedence for "exact name" searches.

RESPONSE: In 1999, the U.S. Court of Appeals, Fifth Circuit, recognized exact name searches in ITT Commercial Finance Corp. v. Bank of the West, No. 97-50500. Leading national organizations such as the International Association of Corporate Administrators and the National Conference of Commissioners on Uniform State Laws have recommended that states adopt exact name searches.

COMMENT 4: Debtors who are aware of the Secretary of State's search criteria will be dishonest and will not use their correct or full name when applying for loans.

RESPONSE: Regardless of the search capabilities or criteria of the Secretary of State's UCC system, a dishonest debtor will find ways to skirt the system. The responsibility is on the creditor to inquire of the debtor other debts under other names, and to request variant name searches from the Secretary of State.

COMMENT 5: Creditors and their representatives performed searches knowing there was a debt, but the search did not reveal this debt or the debtor. As a result, the exact name search criteria is flawed.

RESPONSE: Shortly after implementation of the Secretary of State's new UCC computer system, there were some searches of known debtors that showed nothing. This however, was not a function of the search criteria but an internal system error at the time of implementation. This internal error has been resolved.

COMMENT 6: If the Secretary of State is going to adopt exact name searches, it should provide in its system, searches of debtors using social security numbers (SSN) and tax identification numbers (TIN) because these are more precise than name searches.

RESPONSE: The Secretary of State built the new UCC system in anticipation of being able to add SSN and TIN searches when funding became available. Regardless, this will not solve the problems that result from name searches. It has been the

experience of the Secretary of State that financing statements do not always include correct SSNs or TINs, thereby making searches using these numbers ineffective.

/s/ Mike Cooney
MIKE COONEY
Secretary of State

Reviewed by:

/s/ Daniel J. Whyte
DANIEL J. WHYTE
Rule Reviewer

Dated this 17th Day of July 2000.

VOLUME NO. 48 OPINION NO. 18

COUNTY OFFICERS AND EMPLOYEES - County public welfare department staffing patterns;
EMPLOYEES, PUBLIC - County public welfare department staffing patterns;
PUBLIC ASSISTANCE - County public welfare department staffing patterns;
PUBLIC HEALTH AND HUMAN SERVICES, DEPARTMENT OF - County public welfare department staffing patterns;
LAWS OF MONTANA, 1987 - Chapter 146;
MONTANA CODE ANNOTATED - Sections 41-3-302, 53-2-201, -203, -206, -207, -301, -304, -305, -306, -322, -801 to -813;
OPINIONS OF THE ATTORNEY GENERAL - 45 Op. Att'y Gen. No. 16 (1993).

HELD: Both the Department of Public Health and Human Services and the county welfare boards have an interest in staffing patterns for the county public assistance offices, and staffing patterns should be determined through a process of consultation and negotiation between the Department and the county boards. In the event agreement is not reached, the Department of Public Health and Human Services has the final authority for determining the staffing patterns of a non-assumed county department of public welfare.

July 13, 2000

Mr. Thomas P. Meissner
Fergus County Attorney
712 West Main
Lewistown, MT 59457

Dear Mr. Meissner:

You have requested my opinion on a question which I have rephrased as follows:

> **May the Department of Public Health and Human Services unilaterally determine staffing patterns of a non-assumed county department of public welfare, whether resulting in an increase or a decrease of staff, without consulting with and receiving approval from the county board of public welfare?**

The 1983 Montana Legislature established a statutory scheme by which counties may elect to have their public assistance and protective services programs assumed by the State of Montana. See Mont. Code Ann. §§ 53-2-801 to -813. Prior to that time, protective services programs were the responsibility of the county welfare departments and the Department of Social and

Rehabilitation Services (a predecessor to the Department of Public Health and Human Services). See Mont. Code Ann. § 41-3-302 (1981). Public assistance programs were located in county departments of public welfare, and were subject to the supervision of the Department of Social and Rehabilitation Services. See Mont. Code Ann. § 53-2-305 (1981).

Fergus County, and the 24 counties that have added their names to your opinion request, are among the counties that did not elect to have their programs assumed by the state. Counties that have not transferred their public assistance and protective services to the state must have a county department of public welfare consisting of a county board of public welfare and whatever staff personnel may be "necessary" for the "efficient performance of the public assistance activities of the county." If two or more counties agree, they may combine into one administrative unit and share necessary personnel. Mont. Code Ann. § 53-2-301.

Non-assumed counties select and appoint "necessary" personnel for their public welfare departments from lists of qualified persons provided to the county by the Department of Public Health and Human Services (hereinafter referred to as Department). Staff personnel for each county must include "at least one qualified staff worker or investigator and clerks and stenographers that may be necessary." A supervisor may also be appointed by the county board, if "conditions warrant." Mont. Code Ann. § 53-2-304(1). Unfortunately, Mont. Code Ann. §§ 53-2-301 and -304 are both silent with respect to who determines what staff personnel are "necessary" and when "conditions warrant" the appointment of a supervisor.

The Department is charged with maintaining a merit system for the hiring of public assistance personnel, and with supervising "the appointment, dismissal, and entire status of the public assistance personnel attached to county boards in accordance with [that] merit system." Mont. Code Ann. § 53-2-203(1) and (4). I have previously construed Mont. Code Ann. § 53-2-203--and established practice under that statute--to mean that county welfare department personnel are state employees for employment-benefit purposes. Those purposes include determining entitlement to and participation in retirement incentive programs, reduction in force benefits, sick leave grants, seniority and longevity increases, state grievance procedures, and coverage under the federal Family Medical Leave and Fair Labor Standards Acts. See 45 Op. Att'y Gen. No. 16 (1993). That opinion is helpful in providing background information for the issue you present, but it does not control the conclusion.

County department of public welfare staff in non-assumed counties are hired by and directly responsible to the county board of public welfare, but their efficiency and job performance are supervised by the Department. See Mont. Code Ann. § 53-2-304(1). The two entities also share in the cost of

staffing the county public welfare department, with the state being responsible for federal monies devoted to public assistance. See Mont. Code Ann. §§ 53-2-206, 53-2-207, 53-2-304(2) and (3), and 53-2-322. Thus, much of the responsibility for the selection, supervision, and payment of employees is shared by the state and the county.

Likewise, the decision to determine what staff is "necessary" for the successful operation of a county public welfare department should be shared by the Department and the county board of public welfare. The only possible way both entities can fulfill their duties and responsibilities while remaining fiscally responsible is to share in the determination of necessary staffing patterns for county departments of public welfare located in non-assumed counties. For obvious reasons, the counties and the Department should consult closely with each other in assessing the staffing needs of the local offices. However, when disagreements over staffing issues cannot be resolved by discussion and negotiation, the difficult question arises as to which entity has the final say.

I have previously noted that the statutes in this area are sometimes contradictory. For example, in 45 Op. Att'y Gen. No. 16 (1993), I observed that Mont. Code Ann. § 53-2-203(1)(d), authorizing the Department to "supervise the . . . dismissal . . . of the public assistance personnel attached to the county boards" conflicted with Mont. Code Ann. § 53-2-304(1), which provides that the county board is the final authority for dismissals. The statutes suggest that both the county board and the Department have input into the decision as to whether a particular staff position is "necessary," but they do not clearly provide for the final decision-making authority. This lack of clarity gave rise to the uncertainty underlying your opinion request. Further legislative attention to these statutes would help alleviate the uncertainty.

In 45 Op. Att'y Gen. No. 16, when presented with similarly uninstructive statutes, I relied on agency practice to determine whether public assistance staff attached to the county boards were considered state employees or county employees for purposes of employment benefits. In this case past agency practice is somewhat murky. Your opinion request states that the Department has recently unilaterally reduced the staff in the Lewistown office, and letters from other counties contain similar complaints. There are, however, indications from some counties that staffing determinations were primarily driven by the counties, with only general concurrence by the Department.

I am persuaded that the best approach to this issue is to look at the respective statutory responsibilities of the Department and the county boards. It appears the legislature contemplated that overall supervision of the public assistance function of county boards would rest with the Department, while day-to-day control over board functions would be the responsibility of the

boards. For example, the county boards are empowered to make the hiring decision for staff positions, but they must make their selection from a list of persons deemed qualified by the Department. Mont. Code Ann. § 53-2-304(1). The employees are directly responsible to the boards, but the Department has authority to supervise them in the efficient and proper performance of their duties. Id. The legislature clarified in 1987 that the county boards have final authority to dismiss employees, but statutes also suggest that Department approval is required. 1987 Mont. Laws, ch. 146 (codified in § 53-2-304(1)).

I am most persuaded by the recognition in Mont. Code Ann. § 53-2-203(4) that the Department has the authority to "supervise the appointment, dismissal, and *entire status* of the public assistance personnel attached to county boards." (Emphasis added.) As noted above, I have previously held that those personnel are state employees for salary and benefit purposes. They are identified as state full-time equivalents (FTE) in the budget adopted by the legislature. In my opinion, their "entire status" includes the location in which they are assigned to work.

This conclusion is supported by the overall demarcation of duties between the Department and the county boards described above. The county departments of public welfare are responsible for the day-to-day management of the county welfare department, within the framework of applicable federal and state laws and Departmental rules, see Mont. Code Ann. § 53-2-306, while responsibility for the overall supervision of the public assistance system rests with the Department. The Department could not manage the overall system to ensure efficient use of tax dollars if it did not have the authority to determine, after appropriate consultation with the county, that a particular FTE could best be utilized in another county, or even in the administration of the public assistance system in Helena.

Even in non-assumed counties, the Department remains charged with responsibility for providing organizational services to and supervising county departments and boards of public welfare in the administration of their public assistance functions. See Mont. Code Ann. §§ 53-2-201(1)(d) and -305 (1999). It also retains primary responsibility for providing protective services. See Mont. Code Ann. § 41-3-302 (1999). In order to fulfill these responsibilities, the Department must have final authority with respect to staffing patterns of county welfare departments in the event the Department and the county board of welfare are unable to reach agreement.

THEREFORE, IT IS MY OPINION:

> Both the Department of Public Health and Human Services and the county welfare boards have an interest in staffing patterns for the county public assistance offices, and staffing patterns should be determined through a process of

consultation and negotiation between the Department and the county boards. In the event agreement is not reached, the Department of Public Health and Human Services has the final authority for determining the staffing patterns of a non-assumed county department of public welfare.

Sincerely,

/s/ Joseph P. Mazurek

JOSEPH P. MAZUREK
Attorney General

jpm/mas/dm

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition for declaratory ruling on the protocol of air agitated saline in trans-thoracic echo-cardiograms	)))))	DECLARATORY RULING

TO: All Concerned Persons

1. On June 17, 1999, the Board of Nursing published a Petition for Declaratory Ruling in the above entitled matter at page 1415, 1999 Montana Administrative Register, issue number 12.

2. Hearing on the matter was held July 15, 1999 before the full Board with Lon Mitchell, Hearing Examiner, presiding.

3. At the hearing the Board considered all submitted and written comments as well as formal testimony, then issued its Declaratory Ruling.

ISSUE

4. Is it within the scope of practice for a registered nurse to inject air agitated saline for trans-thoracic echo-cardiograms?

SUMMARY OF COMMENTS

5. One written comment was submitted and one witness testified at the hearing. All comments received were in favor of allowing the procedure. There were no comments or testimony given adverse to that position.

ANALYSIS

6. Pursuant to Section 2-4-501, MCA, the Board is authorized to issue Declaratory Rulings "as to the applicability of any statutory provision."

7. The Petition for Declaratory Ruling was filed in accordance with Section 2-4-501, MCA, and appeared at page 1415, 1999 Montana Administrative Register, Issue No. 12.

8. Section 37-8-102(5)(a) and (b), MCA, defines the scope of "practice of nursing" to include "...the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments... ."

9. ARM 8.32.1404 states, "The registered nurse shall: ...Obtain instruction and supervision as necessary when

implementing techniques or practices; ...Provide optimum client care... ."

10. Based on these definitions and the statutes and facts herein cited, it is within the scope of practice of a registered nurse to inject air agitated saline solution in trans-thoracic echo-cardiograms (commonly called contrast echocardiogram).

CONCLUSIONS

11. After consideration of the comments in support of the Petition, and upon review of the applicable statutes and rules, the Board of Nursing makes the following declaratory ruling.

DECLARATORY RULING

12. It is within the scope of practice for a registered nurse to inject air agitated saline for trans-thoracic echo-cardiograms.

BOARD OF NURSING
RITA HARDING, RN, MN, PRESIDENT

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 17, 2000.

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.

Business and Labor Interim Committee:

- **Department of Agriculture;**
- **Department of Commerce;**
- **Department of Labor and Industry;**
- **Department of Livestock;**
- **Department of Public Service Regulation; and**
- **Office of the State Auditor and Insurance Commissioner.**

Education 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, Justice, and Indian Affairs Interim Committee:

- **Department of Corrections; and**
- **Department of Justice.**

Revenue and Taxation Interim Committee:

- **Department of Revenue; and**
- **Department of Transportation.**

State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:

- **Department of Administration;**
- **Department of Military Affairs; and**
- **Office of the Secretary of State.**

Environmental Quality Council:

- **Department of Environmental Quality;**
- **Department of Fish, Wildlife, and Parks; and**
- **Department of Natural Resources and Conservation.**

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2000. This table includes those rules adopted during the period April 1, 2000 through June 30, 2000 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2000, 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 1999 and 2000 Montana Administrative Registers.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in June 2000, appear. Vacancies scheduled to appear from August 1, 2000, through October 31, 2000, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 10, 2000.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2000

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Plumbers (Commerce)			
Mr. Kim Beaudry	Governor	Coleman	6/7/2000
Billings			5/4/2004
Qualifications (if required): professional engineer qualified in mechanical engineering			
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs)			
Mr. Bob Beals	Director	not listed	6/1/2000
Forsyth			6/1/2002
Qualifications (if required): American Legion			
Mr. Jim Bertrand	Director	not listed	6/1/2000
Miles City			6/1/2002
Qualifications (if required): Military Order of the Cooties			
Mr. Bill Dolatta	Director	not listed	6/1/2000
Terry			6/1/2002
Qualifications (if required): Vietnam Veterans of America			
Ms. Linda Dolatta	Director	not listed	6/1/2000
Terry			6/1/2002
Qualifications (if required): American Legion Auxiliary			
Mr. Ralph Dukart	Director	not listed	6/1/2000
Miles City			6/1/2002
Qualifications (if required): Department of Military Affairs			
Mr. Jess Erickson	Director	not listed	6/1/2000
Miles City			6/1/2002
Qualifications (if required): Veterans of Foreign Wars			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2000

Appointee	Appointed by	Succeeds	Appointment/End Date
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) cont.			
Mr. Tony Harbaugh	Director	not listed	6/1/2000
Miles City			6/1/2002
Qualifications (if required): Custer County Sheriff/Coroner			
Ms. Betty Hopkins	Director	not listed	6/1/2000
Ismay			6/1/2002
Qualifications (if required): Disabled American Veterans Auxiliary			
Mr. Henry "Bill" Hopkins	Director	not listed	6/1/2000
Ismay			6/1/2002
Qualifications (if required): Disabled American Veterans			
Mr. James F. Jacobsen	Director	not listed	6/1/2000
Helena			6/1/2002
Qualifications (if required): Montana Veterans Affairs Division			
Mr. Wayne Kleppelid	Director	not listed	6/1/2000
Circle			6/1/2002
Qualifications (if required): Military Order of the Purple Heart			
Mr. Victor Leikam	Director	not listed	6/1/2000
Billings			6/1/2002
Qualifications (if required): 40 & 8			
Ms. Edith Pawlowski	Director	not listed	6/1/2000
Circle			6/1/2002
Qualifications (if required): Veterans of Foreign Wars Auxiliary			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2000

Appointee	Appointed by	Succeeds	Appointment/End Date
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) cont.			
Mr. Joe Stevenson	Director	not listed	6/1/2000
Miles City			6/1/2002
Qualifications (if required): Custer County Commissioner			
Mr. Frank Stoltz	Director	not listed	6/1/2000
Miles City			6/1/2002
Qualifications (if required): Prisoners of War			
Mr. Stanley Watson	Director	not listed	6/1/2000
Forsyth			6/1/2002
Qualifications (if required): Marine Corp League			
Governor's Standing Committee for Inmate Projections (Corrections)			
Sen. Sue Bartlett	Governor	not listed	6/16/2000
Helena			3/2/2002
Qualifications (if required): legislator			
Rep. Jim Shockley	Governor	McGee	6/16/2000
Victor			3/2/2002
Qualifications (if required): legislator			
Native American Advisory Council (Public Health and Human Services)			
Mr. Jim Baker	Director	not listed	6/2/2000
Cut Bank			6/2/2002
Qualifications (if required): none specified			
Mr. Gordon Belcourt	Director	not listed	6/2/2000
Browning			6/2/2002
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2000

Appointee	Appointed by	Succeeds	Appointment/End Date
Native American Advisory Council (Public Health and Human Services) cont.			
Mr. Ernie Bighorn Miles City Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Mr. Arnie Bighorn Kalispell Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Mr. Tommy Billing Jordan Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Ms. Jo Ann Birdshead Billings Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Mr. Walter Denny Box Elder Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Ms. Carole Lankford Pablo Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Ms. Rosemary Lincoln Crow Agency Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2000

Appointee	Appointed by	Succeeds	Appointment/End Date
Native American Advisory Council (Public Health and Human Services) cont.			
Mr. Garfield Little Light Billings Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Mr. Myron Littlebird Lame Deer Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Ms. Teresa Wall McDonald Pablo Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Ms. Patricia McGeshick Wolf Point Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Ms. Carol Myers Missoula Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Ms. Toni Plummer Kalispell Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Ms. Loretta Rex Browning Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2000

Appointee	Appointed by	Succeeds	Appointment/End Date
Native American Advisory Council (Public Health and Human Services) cont.			
Mr. William Snell Billings Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Ms. Clara Spotted Elk Colstrip Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Ms. Roberta Spotted Horse Billings Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Mr. Duncan Standing Rock, Sr. Box Elder Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Ms. Jackie Tang Lame Deer Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Ms. Arlene Templer St. Ignatius Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002
Ms. Evelyn Werk Harlem Qualifications (if required): none specified	Director	not listed	6/2/2000 6/2/2002

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2000

Appointee	Appointed by	Succeeds	Appointment/End Date
Native American Advisory Council (Public Health and Human Services) cont.			
Ms. Deborah Wetsit	Director	not listed	6/2/2000
Billings			6/2/2002
Qualifications (if required): none specified			
Mr. Tim Zimmerman	Director	not listed	6/2/2000
Havre			6/2/2002
Qualifications (if required): none specified			
Ms. Louise Zokan-delos Reyes	Director	not listed	6/2/2000
Billings			6/2/2002
Qualifications (if required): none specified			
Petroleum Tank Release Compensation Board (Environmental Quality)			
Mr. Tim Hornbacher	Governor	reappointed	6/30/2000
Helena			6/30/2003
Qualifications (if required): service station dealer			
Ms. Mary Ann Sharon	Governor	reappointed	6/30/2000
Dillon			6/30/2003
Qualifications (if required): public member			
State Electrical Board (Commerce)			
Mr. Joe Wolfe	Governor	reappointed	6/15/2000
Helena			7/1/2005
Qualifications (if required): master electrician			
State Emergency Response Commission (Military Affairs)			
Mr. Royce A. Shipley	Governor	not listed	6/15/2000
Great Falls			10/1/2003
Qualifications (if required): representing Malmstrom Air Force Base			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2000

Appointee	Appointed by	Succeeds	Appointment/End Date
Upper Clark Fork River Remediation/Restoration Education Advisory Council (Environmental Quality)			
Mr. Chris Marchion	Governor	Bugni	6/23/2000
Anaconda			4/26/2002
Qualifications (if required): member of the public active in conservation or recreation			
Western Interstate Commission on Higher Education (Commissioner of Higher Education)			
Dr. Francis J. Kerins	Governor	not listed	6/19/2000
Helena			6/19/2004
Qualifications (if required): public member			

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2000 through OCTOBER 31, 2000

Board/current position holder	Appointed by	Term end
Alternative Health Care Board (Commerce)		
Dr. Michael Bergkamp, Helena	Governor	9/1/2000
Qualifications (if required): naturopath		
Board of Outfitters (Commerce)		
Mr. Robin Cunningham, Gallatin Gateway	Governor	10/1/2000
Qualifications (if required): fishing outfitter		
Board of Private Security Patrol Officers and Investigators (Commerce)		
Mr. Gary Racine, Cut Bank	Governor	8/1/2000
Qualifications (if required): representing a county sheriff's department		
Board of Psychologists (Commerce)		
Ms. JoAnn Witt, Carter	Governor	9/1/2000
Qualifications (if required): public member		
Burial Preservation Board (Indian Affairs)		
Mr. Duncan Standing Rock, Sr., Box Elder	Governor	8/22/2000
Qualifications (if required): representing the Chippewa-Cree Tribe		
Mr. Gilbert Horn, Harlem	Governor	8/22/2000
Qualifications (if required): representing the Gros Ventre Tribe		
Mr. Mickey Nelson, Helena	Governor	8/22/2000
Qualifications (if required): representing the Montana Coroner's Association		
Family Support Services Advisory Council (Public Health and Human Services)		
Ms. Jackie Jandt, Helena	Governor	9/14/2000
Qualifications (if required): addictive and mental disorders representative		
Ms. Barbara Stefanic, Laurel	Governor	9/14/2000
Qualifications (if required): representing public preschool service providers		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2000 through OCTOBER 31, 2000

Board/current position holder	Appointed by	Term end
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Ms. Sharon Wagner, Helena	Governor	9/14/2000
Qualifications (if required): representing services for children with special health care needs		
Ms. Sylvia Danforth, Miles City	Governor	9/14/2000
Qualifications (if required): representing Part C contractors		
Ms. Gwen Beyer, Polson	Governor	9/14/2000
Qualifications (if required): representing families of children with disabilities		
Ms. Millie Kindle, Malta	Governor	9/14/2000
Qualifications (if required): representing families of children with disabilities		
Mr. Ted Maloney, Missoula	Governor	9/14/2000
Qualifications (if required): representing the public		
Ms. Sue Forest, Missoula	Governor	9/14/2000
Qualifications (if required): representing higher education/personnel preparation		
Ms. Beth Kenny, Helena	Governor	9/14/2000
Qualifications (if required): representing families of children with disabilities		
Mr. John Holbrook, Helena	Governor	9/14/2000
Qualifications (if required): representing technical expertise on private insurance issues		
Ms. Chris Volinkaty, Missoula	Governor	9/14/2000
Qualifications (if required): representing Part C contractor agencies		
Mr. Dan McCarthy, Helena	Governor	9/14/2000
Qualifications (if required): representing Office of Public Instruction		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2000 through OCTOBER 31, 2000

Board/current position holder	Appointed by	Term end
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Ms. Sandi Marisdotter, Helena	Governor	9/14/2000
Qualifications (if required): representing Part C contractor agencies		
Governor's Council on Disability (Administration)		
Mr. Bill Roberts, Helena	Governor	8/12/2000
Qualifications (if required): public member		
Mr. James Meldrum, Helena	Governor	8/12/2000
Qualifications (if required): public member		
Mr. Michael Regnier, Missoula	Governor	8/12/2000
Qualifications (if required): public member		
Mr. Peter Leech, Missoula	Governor	8/12/2000
Qualifications (if required): public member		
Ms. Mary Morrison, Missoula	Governor	8/12/2000
Qualifications (if required): public member		
Governor's Council on Families (Public Health and Human Services)		
Judge Katherine "Kitty" Curtis, Columbia Falls	Governor	8/12/2000
Qualifications (if required): public member		
Rep. Loren Soft, Billings	Governor	8/18/2000
Qualifications (if required): public member		
Mr. Kirk Astroth, Belgrade	Governor	8/12/2000
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2000 through OCTOBER 31, 2000

Board/current position holder	Appointed by	Term end
Historical Preservation Review Board (Historical Society)		
Mr. Kirk Michels, Livingston	Governor	10/1/2000
Qualifications (if required): architectural historian		
Mr. Dennis L. Deppmeier, Billings	Governor	10/1/2000
Qualifications (if required): historical architect		
Lewis and Clark Bicentennial Commission (Historical Society)		
Ms. Jeanne Eder, Dillon	Governor	10/1/2000
Qualifications (if required): enrolled member of a Montana Indian Tribe		
Ms. Edythe McCleary, Hardin	Governor	10/1/2000
Qualifications (if required): public member		
Mr. John G. Lepley, Fort Benton	Governor	10/1/2000
Qualifications (if required): public member		
Montana Historical Records Advisory Council (Historical Society)		
Mr. Timothy Bernardis, Crow Agency	Governor	9/14/2000
Qualifications (if required): public member		
Ms. Ellen Crain, Butte	Governor	9/14/2000
Qualifications (if required): public member		
Ms. Kathryn Otto, Helena	Governor	9/14/2000
Qualifications (if required): State Archivist		
Mr. Robert M. Clark, Helena	Governor	9/14/2000
Qualifications (if required): public member		
Montana Wheat and Barley Committee (Agriculture)		
Mr. Duane Arneklev, Plentywood	Governor	8/20/2000
Qualifications (if required): Democrat from District I		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2000 through OCTOBER 31, 2000

Board/current position holder	Appointed by	Term end
Montana Wheat and Barley Committee (Agriculture) cont.		
Mr. Dan DeBuff, Shawmut	Governor	8/20/2000
Qualifications (if required): Republican from District V		
Noxious Weed Seed Free Forage Advisory Council (Agriculture)		
Mr. Harry Woll, Kalispell	Director	9/23/2000
Qualifications (if required): none specified		
Mr. LaMonte Schnur, Townsend	Director	9/23/2000
Qualifications (if required): none specified		
Mr. Dennis Perry, Choteau	Director	9/23/2000
Qualifications (if required): none specified		
Ms. Marjorie Schuler, Carter	Director	9/23/2000
Qualifications (if required): none specified		
Mr. Bob McNeill, Dillon	Director	9/23/2000
Qualifications (if required): none specified		
Mr. Kerry Kovanda, Columbus	Director	9/23/2000
Qualifications (if required): none specified		
Mr. W. Ralph Peck, Helena	Director	9/23/2000
Qualifications (if required): none specified		
Mr. Don Walker, Glendive	Director	9/23/2000
Qualifications (if required): none specified		
Mr. Robert Carlson, Butte	Director	9/23/2000
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2000 through OCTOBER 31, 2000

Board/current position holder	Appointed by	Term end
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont.		
Mr. Ray Ditterline, Bozeman	Director	9/23/2000
Qualifications (if required): none specified		
Mr. Dennis Cash, Bozeman	Director	9/23/2000
Qualifications (if required): none specified		
Risk Management Advisory Council (Administration)		
Mr. Gary Managhan, Helena	Governor	8/26/2000
Qualifications (if required): representing the Secretary of State's Office		
Ms. Karen Munro, Helena	Governor	8/26/2000
Qualifications (if required): representing the Department of Justice		
Mr. Bruce Swick, Helena	Governor	8/26/2000
Qualifications (if required): representing the Department of Natural Resources and Conservation		
Ms. Geralyn Driscoll, Helena	Governor	8/26/2000
Qualifications (if required): representing the Office of Public Instruction		
Ms. Donna Campbell, Helena	Governor	8/26/2000
Qualifications (if required): representing the Department of Fish, Wildlife and Parks		
Mr. Forest Farris, Helena	Governor	8/26/2000
Qualifications (if required): representing the Department of Environmental Quality		
Mr. Thomas H. Gibson, Bozeman	Governor	8/26/2000
Qualifications (if required): representing the University System		
Mr. Bob Person, Helena	Governor	8/26/2000
Qualifications (if required): representing the Office of the Legislative Services Division		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2000 through OCTOBER 31, 2000

Board/current position holder	Appointed by	Term end
Risk Management Advisory Council (Administration) cont.		
Ms. Cathy Muri, Helena	Governor	8/26/2000
Qualifications (if required): representing the Governor's Office		
Mr. Michael Buckley, Helena	Governor	8/26/2000
Qualifications (if required): representing the Department of Transportation		
Mr. Patrick A. Chenovick, Helena	Governor	8/26/2000
Qualifications (if required): representing the Montana Judiciary		
Ms. Barb Charlton, Helena	Governor	8/26/2000
Qualifications (if required): representing the Department of Commerce		
Ms. Laura Calkin, Helena	Governor	8/26/2000
Qualifications (if required): representing the Public Service Commission		
SABHRS Executive Council (Administration)		
Mr. Terry Johnson, Helena	Director	10/29/2000
Qualifications (if required): Tier 1		
Mr. Tony Herbert, Helena	Director	10/29/2000
Qualifications (if required): Tier 1		
Mr. William Salisbury, Helena	Director	10/29/2000
Qualifications (if required): Tier 2		
Water and Wastewater Operators Advisory Council (Health and Environmental Sciences)		
Mr. Lee Leivo, Big Fork	Governor	10/16/2000
Qualifications (if required): wastewater plant operator		