MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed amendment of ARM 4.12.1507 and 4.12.1508 relating to mint definitions and conditions governing importation of mint and mint rootstock	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 6, 2001, the Montana Department of Agriculture proposes to amend the above stated rules relating to mint definitions and conditions governing importation of mint and mint rootstock.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on December 21, 2000, to advise us of the nature of the accommodation that you need. Please contact George Algard, Bureau Chief, Technical Services Bureau, Agricultural Sciences Division at the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-5400; TDD: (406) 444-4687; Fax: (406) 444-7336; or E-mail: agr@state.mt.us.

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

<u>4.12.1507 DEFINITIONS</u> ~~(1) "Berlese funnel" insect collection method is a procedure used by entomologists whereby mint rootstock stolon samples are placed in a funnel with a light above the stolon tissue. Over a period of time, the insect pests will migrate away from the light, down the funnel, and will be captured for examination.~~

~~(2)~~ <u>(1)</u> "Certified" mint rootstock is rootstock which has been grown under an official certification program and been found free of mint wilt and pests. The certification program must meet or exceed the certification standards set forth in ARM 4.12.1508.

~~(3)~~ <u>(2)</u> "Committee" means the Montana mint committee established in 2-15-3006, MCA.

~~(4)~~ <u>(3)</u> "Equipment" means any machinery, tools, utensils, and other items used in the planting, propagation, tillage, harvesting, processing, storage, and transportation of mint or mint rootstock, or in the extraction of mint oil.

~~(5)~~ <u>(4)</u> "Mint" means all varieties and hybrids of plants of the genus "Mentha".

~~(6)~~ (5) "Mint rootstock" means any propagative plant parts of all varieties and hybrids of plants of the genus "Mentha".

~~(7)~~ (6) "Mint wilt" means the disease caused by all strains of the pathogen "Verticillium dahliae" that infects mint.

~~(8)~~ (7) "Nuclear stock" is verticillium wilt free tip cuttings or meristem culture obtained from mother block plants and grown or cultured in isolated, sanitary conditions.

~~(9)~~ (8) "Pests" includes but is not limited to:

(a) northern root knot nematode (Meloidogyne hapla)~~,~~;

(b) root lesion nematode (Pratylenchus penetrans)~~,~~;

(c) strawberry root weevil (Otiorhynchus ovatus)~~,~~;

(d) wire worm (Coleoptera: Elateridae)~~,~~;

(e) mint root borer (Fumibotys fumalis)~~,~~;

(f) mint flea beetle (Longitarsus ferrugineus, formerly L. waterhousei)~~,~~;

(g) mint stem borer (Pseudobaris nigrina)~~,~~; and

(h) noxious weeds.

~~(10)~~ (9) "Phytosanitary certificate" means a document issued by the department or the plant pest regulatory agency of another state or nation which declares that the mint, mint rootstock, or equipment named on the document ~~is free of mint wilt or pests~~ complies with the conditions of these rules.

AUTH: 80-11-403, MCA
IMP: 80-11-401, MCA

Reason: Section (1) The Berlese funnel is not the only acceptable scientific method to determine the number of insect pests and the mint committee wants the latitude to accept other methods that may be used in other mint rootstalk producing states. Section (8) There are several root knot nematodes, and this clarifies that mint growers are concerned with the northern species as a pest of mint. Section (9) The insertion of "nation" would allow mint rootstalks to come from Canada and/or Mexico (for example). The "complies with" statement recognizes that some mint pests will no longer be zero tolerance.

4.12.1508 CONDITIONS GOVERNING IMPORTATION OF MINT AND MINT ROOTSTOCK (1) No mint or mint rootstock shall enter Montana unless the following conditions are met:

(a) The mint or mint rootstock is certified mint or mint rootstock which meets the following criteria:

(i) The acreage from which the imported mint or mint rootstock originates is included in an official mint certification program which has been reviewed prior to importation by the committee and found to substantially meet or exceed the requirements of this rule; or

(ii) The mint or mint rootstock has been inspected in the state of origin. The inspection procedures used by the state of origin must be reviewed and approved by the head of the department of plant sciences and plant pathology, Montana

state university and the mint committee prior to shipment of mint into Montana and must meet inspection criteria listed below~~.~~:

(A) The inspections shall be conducted at such times in the life cycle of the pests and mint wilt to maximize the ability of the mint inspector to detect the pests and mint wilt if present. All mint rootstock fields shall be inspected according to the following procedure:

~~(I) Each 5 acres shall have 2 samples taken just prior to harvest; sample sites shall include areas of plant stress or damage suspected to be due to mint wilt or mint pests. Each sample site shall include 1 square foot of soil and roots to a depth of 2 inches. The 2 samples shall be mixed and screened in the field and placed in berlese funnels to collect the larvae. These shall be collected at appropriate times in the life cycle of the mint root borer, mint flea beetle, strawberry root weevil, mint stem borer, and wire worms to assure detection in the stolons if the pests are present.~~

~~(II)~~(I) Based on the field inspection the samples shall be free of mint wilt and mint stem borer~~, strawberry root weevil or mint flea beetle~~ (0 tolerance). The 0 tolerance for these pests applies to the life of the mint field. The identity and level of pests detected shall be recorded and provided on the phytosanitary certificate for mint root borer, strawberry root weevil, mint flea beetle and wire worm~~.~~; and

~~(III)~~(II) ~~During early July, August or early September, randomly probe feeder roots in a healthy field or identify stressed areas and probe feeder roots around the perimeter of these areas. Twenty core samples shall be combined into one sample for each 20 acre field or division thereof.~~ Two field inspections shall occur, one early in the growing season and one in early fall prior to harvest. ~~The f~~Feeder roots shall be analyzed for the root knot nematode and root lesion nematode. ~~The samples shall be free of the root knot nematode (0 tolerance). The level of root lesion nematode shall be recorded on the phytosanitary certificate.~~ Identification and level of infestation of the northern root knot nematode (Meloidogyne hapla) and/or Columbia root knot nematode (Meloidogyne chitwoodii) and root lesion nematode will be stated on the phytosanitary certificate. It is the responsibility of the exporting state to assure that inspections have occurred at appropriate times~~; and~~.

(iii) The person(s) conducting the inspections must be able to demonstrate by education, training, and experience, the expertise necessary to identify mint wilt and mint pests~~; or~~.

(b) The mint, mint rootstock, or mint plant tissue is tested by Montana state university and is determined to ~~be free of mint wilt and pests. Fees for the testing will be determined by Montana state university~~ meet the tolerances of (1)(a)(ii)(A) above. The head of the department of plant sciences and plant pathology, Montana state university and the mint committee may also review and approve other testing if

they are satisfied that the testing meets the tolerances of (1)(a)(ii)(A) above; or

(c) Nuclear stock may be imported when accompanied with a phytosanitary certificate confirming that the nuclear stock has been grown in sanitary, isolated, and environmentally controlled conditions, and the nuclear stock is free of all pests and mint wilt.

(2) Each lot of mint or mint rootstock shipped into Montana must be accompanied by a phytosanitary certificate which states:

(a) The name, address, and phone number of the shipper; and

(b) The ~~legal~~ general description ~~down to quarter section~~ of the field location(s) where the mint or mint rootstock originated from; ~~and a map such as an (ASCS map) of the mint field(s) which identifies (by number or letter or a combination of both) which field(s) the mint or mint rootstock originated from;~~

(c) The name, address, and phone number of the importer; ~~and~~

(d) A statement that the mint or mint rootstock is certified mint or ~~mint rootstock~~ inspected according to the above defined procedure; ~~and~~

(e) A statement declaring that, based on inspection of the mint or mint rootstock according to the above defined procedure, no mint wilt ~~and pests~~ or mint stem borer have been found, and the identity and ~~with the exception that~~ the level or amount of infestation for the root knot nematode, root lesion nematode, mint root borer, strawberry root weevil, mint flea beetle and wire worm infestations must be stated~~.~~; and

(f) Each importing Montana grower will receive a copy of the phytosanitary certificate which contains the information in (2)(~~e) for each field from which~~ on the imported mint rootstock ~~was taken~~. When possible these copies shall be provided to Montana growers prior to importation.

(3) A copy of the phytosanitary certificate must be sent to the Montana department of agriculture by the agency responsible for plant pest regulations in the state of origin prior to importation of the mint or mint rootstock. The department shall forward a copy of the phytosanitary certificate to the chairman of the Montana mint committee and the appropriate grower.

(4) If any imported mint or mint rootstock is found to be in violation of these importation rules, the mint or mint rootstocks shall be shipped back to the exporting grower or destroyed at the discretion of the importer. If the mint or mint rootstock has already been planted, the mint shall be destroyed by tillage or chemical means. All such remedial actions shall be at the importing grower's expense.

AUTH: 80-11-403, MCA
IMP: 80-11-401, MCA

Reason: Section (1)(a)(ii) This specifically identifies the persons responsible for review and approval of inspection procedures. Section (1)(a)(ii)(A)(I) There are other sampling techniques that are acceptable and the elimination of this sub-section would give the Mint Committee the latitude to accept other sampling (inspection) techniques. Section (1)(a)(ii)(A)(II) The strawberry root weevil and mint flea beetle will no longer have a zero tolerance because there are methods available to control them, but their numbers must be recorded on the phytosanitary certificate. Section (1)(a)(ii)(A)(III) This clarifies that two field inspections must occur and that the numbers of the northern root knot nematode, the Columbia root knot nematode and the root lesion nematode must be stated on the phytosanitary certificates so that the growers are aware of the pests that may be present in their field. Section (1)(b) This reiterates that the established tolerances must be met when mint, mint rootstalk or mint tissue is tested. The presence or absence of any mint pests must be determined and documented on the phytosanitary certificate. It also establishes the persons responsible for reviewing and approving other testing techniques used by other states and nations to ensure that the testing meets the established tolerances. Section (2)(b) This had created a problem for rootstalk growers in other states in the past (primarily because of small field sizes) and the Mint Committee decided to accept a general description of the fields from which mint or mint rootstalk originated from in the event there is a problem with the imported mint. Section (2)(e) This is to clarify which pests are zero tolerance and which pests must be reported by numbers present on the phytosanitary certificate. Section (2)(f) This clarifies that each importing grower will receive a phytosanitary certificate with the information required in ARM 4.12.1508(2). Section (3) This is to ensure that the importing Montana grower receives a copy of the phytosanitary certificate, provided by the mint exporter, from the department.

4. Concerned persons may submit their data, views or arguments concerning this proposed action in writing to George Algard, Bureau Chief, Technical Services Bureau, Agricultural Sciences Division at the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-7336; or E-mail: agr@state.mt.us. Any comments must be received no later than January 4, 2001.

5. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to George Algard, Bureau Chief, Technical Services Bureau, Agricultural Sciences Division at the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-5400; TDD: (406) 444-4687; Fax: (406) 444-7336; or E-mail: agr@state.mt.us. A

written request for hearing must be received no later than January 4, 2001.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 5 persons based on the 45 mint growers in Flathead and Ravalli counties.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, agriculture heritage program, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-7336; or E-mail: agr@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

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

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck	/s/ Tim Meloy
Ralph Peck	Tim Meloy, Attorney
Director	Rules Reviewer

Certified to the Secretary of State November 27, 2000.

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to unprofessional conduct	) NOTICE OF THE PROPOSED) AMENDMENT OF ARM 8.36.412) UNPROFESSIONAL CONDUCT

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 8, 2001, the Board of Optometry proposes to amend the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation contact the Board of Optometry no later than 5:00 p.m., on January 4, 2001, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolopt@state.mt.us.

3. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

8.36.412 UNPROFESSIONAL CONDUCT (1) Unprofessional conduct includes, but is not limited to, the following items or combination thereof:

(1) through (3) will remain the same but be renumbered (a) through (c).

~~(4)~~ (d) A pattern of practice or other behavior that demonstrates ~~a willful~~ rendering of substandard care, either individually or as part of a third party reimbursement agreement or any other agreement.

(5) through (19) will remain the same but be renumbered (e) through (s).

Auth: Sec. 37-10-202, MCA
IMP: Sec. 37-10-105, MCA

REASON: The purpose of the proposed rule change is to withdraw the intent requirement in the rule as negligent or intentional substandard delivery of services are and should be grounds for a finding of unprofessional conduct by an optometrist. Such substandard services do not meet the duty of a licensee to provide professional care to their patients. This change is intended to provide more consistency with the Board's purpose and directive as contained in 37-10-105, MCA.

4. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to the

Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolopt@state.mt.us to be received no later than 5:00 p.m., January 4, 2001. If comments are submitted in writing, the Board requests that the person submit six copies of their comments.

5. If persons who are directly affected by the proposed actions wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolopt@state.mt.us to be received no later than 5:00 p.m., January 4, 2001.

6. If the Board receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed actions, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 27 based on the 265 licensed optometrists in Montana.

7. The Board of Optometry maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Optometry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to compolopt@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF OPTOMETRY
CHARLIENE STAFFANSON, 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, November 27, 2000.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to licensure and fees	) NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 8.39.514 LICENSURE - GUIDE OR PROFESSIONAL GUIDE LICENSE AND 8.39.518 LICENSURE -- FEES FOR OUTFITTER, OPERATIONS PLAN, NET CLIENT HUNTING USE (N.C.H.U.), AND GUIDE OR PROFESSIONAL GUIDE

TO: All Concerned Persons

1. On January 3, 2001, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing conference room, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment 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 Outfitters no later than 5:00 p.m., on December 27, 2000, to advise us of the nature of the accommodation that you need. Please contact Hank Worsech, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolout@state.mt.us.

3. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

8.39.514 LICENSURE - GUIDE OR PROFESSIONAL GUIDE LICENSE

(1) through (5)(a) will remain the same.

(b) ~~One t~~Temporary guide forms will be provided to each outfitter annually. The board will permit the outfitter to use one temporary guide license per licensure period, unless under state or federal emergency, the number of temporary guide licenses may be increased to a number determined by the board. An outfitter is prohibited from sharing temporary guide licenses with another outfitter.

(c) and (d) will remain the same.

Auth: Sec. 37-1-131, 37-47-201, MCA
IMP: Sec. 37-47-201, 37-47-301, 37-47-307, MCA

REASON: The board is proposing this rule amendment to permanently adopt the temporary emergency rule which was adopted September 11, 2000. In years where there are severe forest fires that diminish the number of guides available for

utilization by outfitters because licensed guides are fighting fires, working for the Forest Service or working out of state, areas closed because of fire danger may be opened with short notice. Due to short notice the ability to obtain a guide license is restricted. These adverse circumstances may cause a threat to the public health, safety and welfare through the potential use of unlicensed guides. Many outfitters, guides, clients, motels, restaurants and the state will suffer economic loss with the lack of licensed guides. This rule amendment will allow outfitters to use additional guides operating under temporary licenses.

8.39.518 LICENSURE--FEES FOR OUTFITTER, OPERATIONS PLAN, NET CLIENT HUNTING USE (N.C.H.U.), AND GUIDE OR PROFESSIONAL GUIDE (1) will remain the same.

(a) New resident outfitter application and license. This fee includes the following costs, but does not include fees related to operations plan. ~~$900~~ 1,000

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

(iv) resident license ~~200~~ 300

(b) will remain the same.

(c) Renewal of outfitter license

(i) resident outfitter annual license ~~235~~ 300

(ii) and (iii) will remain the same.

(d) through (h) will remain the same.

(i) Resident guide or resident professional guide license

(i) resident guide renewal ~~75~~ 100

(ii) resident original guide license ~~75~~ 100

(iii) resident temporary guide license ~~75~~ 100

(j) will remain the same.

Auth: Sec. 37-1-131, 37-1-134, 37-47-201, MCA
IMP: Sec. 37-1-134, 37-47-201, MCA

REASON: The Board of Outfitters is proposing a fee increase commensurate with costs. Fiscal year 2001 appropriations have been proposed at $437,905.00. Annual revenue from fees at the current level will be $368,987.60, creating a deficit of $68,918.00. Without a fee increase, surplus will drop and the cash balance will go negative in fiscal year 2003. The proposed fee increase will create additional revenue of $68,643.00. Several factors have caused an increase in appropriation such as, an additional database, salary of an additional full time employee for the Board staff, and costs associated with more work in the field by Board investigators. Loss of revenue is due to a decrease in the number of outfitter and guide license renewals. There are 2673 current licensees that will be affected by the proposed fee increase.

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

Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolout@state.mt.us and must be received no later than 5:00 p.m. on January 4, 2001. If comments are submitted in writing, the Board requests that the person submit nine copies of their comments.

5. F. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

6. The Board of Outfitters maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Outfitters' administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to compolout@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, do not apply.

BOARD OF OUTFITTERS
RAYMOND RUGG, 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, November 27, 2000.

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

In the matter of the amendment of ARM 12.6.1602 and the adoption of new rules regarding a definition of department, and clarification of game bird permits and field trial permits	AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION OF NEW RULES EXTENSION OF COMMENT PERIOD

TO: All Concerned Persons

1. On November 9, 2000, the Department of Fish, Wildlife and Parks (department) published notice of a public hearing on the proposed amendment of ARM 12.6.1602 and the adoption of new rules regarding a definition of department and clarification of game bird permits and field trial permits. The proposed amendment and proposed new rules can be found on page 3092 of the 2000 Montana Administrative Register, Issue 21.

2. The Department of Fish, Wildlife and Parks (department) will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Fish, Wildlife and Parks no later than 5:00 p.m. December 18, 2000, to advise us of the nature of the accommodation that you need. Please contact Debbie Bingham, Fish, Wildlife and Parks, 1420 East 6th Ave., P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-2452; fax (406) 444-7456.

3. Since the department did not mail copies of the rule notice advising game bird farm licensees of the proposed rule changes and hearing until the last week of November, the department is extending the comment deadline to January 15, 2001, to ensure that these individuals have ample opportunity to comment on the proposal.

By: /s/ Patrick J. Graham
Patrick J. Graham
Director

By: /s/ John F. Lynch
John F. Lynch
Rule Reviewer

Certified to the Secretary of State November 27, 2000

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.50.801, 17.50.802, 17.50.806, 17.50.809 and 17.50.810, the adoption of New Rules I-IX, and the repeal of ARM 17.50.805, 17.50.807 and 17.50.808, pertaining to licensing, waste disposal, recordkeeping, and inspection for businesses pumping wastes from septic tank systems, privies, car wash sumps, and grease traps, and other similar wastes	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL OF RULES (SOLID WASTE)

TO: All Concerned Persons

1. On January 4, 2001 at 9:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of rules pertaining to licensing, waste disposal, recordkeeping, and inspection for businesses pumping wastes from septic tank systems, privies, car wash sumps, and grease traps, and other similar wastes.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5 p.m., December 29, 2000, to advise us of the nature of the accommodation that you need. Please contact the Community Services Bureau, ATTN: Norm Mullen, P.O. Box 200901, Helena, MT 59620-0901; telephone (406) 444-4961; fax (406) 444-1374; e-mail nmullen@state.mt.us.

3. The rules, as proposed to be amended, appear as follows. Text of present rule with matter to be stricken interlined and new matter underlined.

17.50.801 PURPOSE (1) The purpose of this subchapter is to provide standards for the licensure of cesspool, septic tank and privy cleaning businesses~~;~~ and to establish uniform requirements for the disposal of ~~sites receiving~~ septage, grease trap waste, privy waste, car wash sump waste, and other similar wastes.

(2) Wastes must be managed in a manner that is protective of human health and the environment.

(3) A person may not place wastes on or into private or public property without the express permission of the land owner, facility operator, or the designated representative of the owner or operator.

AUTH: 75-10-1202, MCA
IMP: 75-10-1202, MCA

17.50.802 DEFINITIONS In addition to the definitions in ~~37-41-104~~ 75-10-1202, MCA, the following definitions apply in this subchapter:

(1) "Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

(2) "Agronomic rate" means the whole septage application rate (dry rate basis) designed to:

(a) provide the amount of nitrogen needed by the food crop, feed crop, cover crop, or vegetation grown on the land; and

(b) minimize the amount of nitrogen in the septage that passes below the root zone of the crop or vegetation grown on the land to the ground water.

~~(5)~~(3) "Applied to the land surface" means the uniform application of liquid or semi-liquid waste material at a rate closely approximating that which will result in maximum benefit to the crop or vegetative cover in the field, without ponding, runoff, or leaching.

(4) "Attended car wash bay" means a place for washing trucks or automobiles that has an attendant on site while open to the public.

(5) "Automatic car wash bay" means a place for washing trucks or automobiles that has machinery designed to do the washing without allowing access to the bay during the process.

(6) "Bulk septage" means septage that is not sold or given away in a bag or other container for application to the land.

(7) "Car wash sump" means an interceptor or settling device, designed to be emptied by mechanical means, located below the normal grade of a wastewater gravity system used to precipitate mud from wastewater at a car wash, garage, or vehicle maintenance facility before the water enters a sanitary sewer or individual wastewater treatment system.

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

~~(6)~~(9) "Control of public access" means reasonable precautions to prevent ~~excessive~~ exposure of humans to pathogenic materials. ~~"Controlled"~~ This does not mean that all entry must be precluded. ~~For example, waste land may still be used by hunters, but should not be used for parklands, playgrounds or other areas for general use by the public.~~

~~(1) "Crops for direct human consumption" means crops that are consumed by humans without processing to minimize pathogens prior to distribution to the consumer. Examples may include, but are not limited to, lettuce, potatoes, and other garden produce.~~

(10) "Dewatered" means waste that passes the Paint Filter Liquids Test (Method 9095 in Manual SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA (Update IIIA)).

(11) "Feed crops" means crops produced primarily for

animals.

(12) "Fiber crops" means non-edible crops such as flax and cotton raised for fiber.

(13) "Food crops" means crops consumed by humans. These include, but are not limited to, fruits, vegetables, grains and tobacco.

(14) "Forest" means a tract of land with trees and underbrush.

(15) "Grease interceptor" means an interceptor of at least 750-gallon (2839 L) capacity that serves one or more fixtures and is remotely located from the fixtures.

(16) "Grease trap" means a device designed to retain grease from one to four fixtures.

(17) "Grease trap waste" means the water, solids, and semi-solid material removed from a grease trap or grease interceptor designed to remove cooking grease from home or restaurant wastewater in a sewer system. It does not include oil/water separator wastes at industrial facilities.

(18) "Gray water" means any wastewater other than toilet wastes or industrial chemicals, and includes, but is not limited to, shower and bath wastewater, kitchen wastewater and laundry wastewater.

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

~~(2)~~(20) "Incorporated into the soil" means the injection of ~~solid~~ waste beneath the surface of the soil or the mixing of ~~septage~~ waste with the surface soil by plow, disk harrow, spring harrow, tiller, or other department-approved method.

(21) "Interceptor" or "clarifier" means a device designed and installed so as to separate and retain deleterious, hazardous, or undesirable matter from normal wastes and permit discharge of normal sewage or liquid wastes into the disposal terminal by gravity.

(22) "Land with a high potential for public exposure" means land that the public uses frequently. This includes, but is not limited to, public contact sites and reclamation sites located in populated areas (e.g., a construction site located in a city).

(23) "Land with a low potential for public exposure" is land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and reclamation sites located in unpopulated areas (e.g., a strip mine located in a rural area).

(24) "Pasture land" means land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover (fodder).

~~(3) "Processes to further reduce pathogens" and "processes to significantly reduce pathogens" means processes described in ARM 17.50.808 which are determined by the department to provide adequate treatment of septage prior to land surface application or incorporation into the soil.~~

(25) "Portable toilet" means a sealed pit privy designed to be readily transportable.

(26) "Privy" means a covered or uncovered facility for placement of non-water-carried toilet wastes where the wastes are discharged directly into a seepage pit without treatment in a septic tank.

(27) "Public contact site" means land with a high potential for contact by the public. This includes, but is not limited to, public parks, cemeteries, plant nurseries, turf farms, and golf courses.

(28) "Pumpings" means the materials, liquid and solid, removed from a cesspool, septic tank, privy, portable toilet, grease trap, or car wash (or similar) sump.

(29) "Range land" means open land with indigenous vegetation.

(30) "Reclamation site" means drastically disturbed land that is being reclaimed. This may include, but is not limited to, strip mines and construction sites.

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

(32) "Septic tank" means a watertight tank that receives and partially treats sewage through the process of sedimentation, oxidation, floatation, and bacterial action so as to separate solids from the liquid in the sewage, and then discharges the liquid to further treatment.

(33) "Sewage sludge" means the solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works.

(a) Sewage sludge includes, but is not limited to:

(i) domestic septage;

(ii) scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and

(iii) material derived from sewage sludge.

(b) Sewage sludge does not include ash generated during firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

(34) "Unattended car wash bay" means a place for washing cars or trucks that is not an automatic car wash bay and does not have continuous supervision while open to the public.

(35) "Vector" means any rodent, insect, or other organism, capable of transmitting disease to humans.

(36) "Vessel pumpout facility" means a facility designed to receive wastes from marine sanitation devices, as defined in 23-2-522(3)(a), MCA.

~~(4) "Trenching or burial operation" means the placement of septage in a trench or other natural or man made depression and covering with soil or other suitable material at the end of each operating day such that the septage wastes do not migrate to the surface.~~

AUTH: 75-10-1202, MCA
IMP: 75-10-1202, MCA

17.50.806 PROCESSING OF LICENSE APPLICATIONS (1) The

department shall review each submitted application for a new or renewed license to ~~insure~~ ensure that it is complete. If additional information is required, the department shall notify the applicant in writing within 30 days after the department receives the application and shall postpone processing the application until the additional information ~~requested~~ is received and the application is complete. If the department does not receive ~~requested~~ additional information ~~is not received~~ within 90 days after requesting it from the applicant ~~has been notified~~, it may require a new application ~~must be submitted~~.

(2) The department shall review the completed application and relevant information and make a decision whether to issue, deny, or renew a license based on the applicant's apparent ability to comply with the ~~act~~ requirements of Title 75, chapter 10, part 12, MCA, and this subchapter.

(3) The department's decision to grant or renew a license may include such special conditions ~~imposed pursuant to ARM 17.50.808, 17.50.809, and 17.50.810,~~ as are considered necessary to protect public health and the environment and avoid public nuisances.

(4) ~~An applicant who wishes to protest a condition imposed on his license may, within 30 days after receipt of notice of the department's action, request a hearing before the department, pursuant to the procedures provided in 37-41-211, MCA.~~ Within five days after receiving a completed application for a license, the department shall notify the local health officer or designated representative of each county in which the applicant proposes to do business. To allow the local health officer or designated representative an opportunity to review and comment on an application, the department may not issue a license until five days after notifying the local health officer or designated representative.

(5) The department shall issue a license within 30 days after the decision to approve the license.

AUTH: 75-10-1202, MCA
IMP: 75-10-1202, 75-10-1210, 75-10-1212, 75-10-1221, MCA

17.50.809 SPECIFIC LAND APPLICATION SITE CRITERIA

(1) ~~There must be no occupied building within 500 feet of the land application area.~~ A person may not apply pumpings to land within 500 feet of any occupied building.

(2) ~~There must be no surface water body or drainageway within 150 feet of the land application area.~~ A person may not apply pumpings to land within 150 feet of any state surface water, including intermittent drainages and wetlands. The department or local health officer or the health officer's designated representative may require greater ~~Greater~~ distances ~~may be required~~ where slopes or other factors may increase the likelihood of runoff from the land application area.

(3) ~~There must be no~~ A person may not apply pumpings to land within 100 feet of any state, federal, county or city maintained highways or roads ~~within 100 feet of the land~~

~~application area~~.

(4) ~~There must be no~~ A person may not apply pumpings to land within 100 feet of a drinking water supply source~~s within 100 feet of the land application area~~.

(5) Topographical slopes on cultivated fields must be taken into account when a person is selecting land application areas. ~~All reasonable efforts must be made to insure that ponding~~ A person may not apply pumpings where ponding or runoff of septage ~~does not~~ is likely to occur.

(6) ~~If trench or burial disposal is used, there must be at least 20 feet of separation between the septage and seasonally high groundwater with no soil percolation rate within this zone exceeding 1 1/2 inches per hour. Examples of suitable soils may include, but are not limited to those containing organic or inorganic clay or silts. In general, sandy or gravelly soils are suitable only when finer soils are present.~~ A person may not apply pumpings to land with slopes greater than 6 percent.

(7) A person may not apply pumpings to land through subsurface injection on slopes greater than 12 percent.

~~(7)~~(8) ~~If~~ Bulk septage ~~is~~ may be applied to the land surface~~, there must be~~ only where at least ~~6~~ six feet ~~separation between the septage and~~ separate the land surface from seasonally high ground water. ~~Greater separation may be required~~ The department or local health officer or the health officer's designated representative may require greater separation where soil types or specific application processes might increase the ~~chance~~ likelihood of ground water contamination.

(9) A person may not apply any pumpings to land before that person obtains the express written permission of the land owner or the land owner’s designated representative. If land is leased from a tribe or governmental agency, permission of the tribe or agency must be obtained before pumpings may be applied to the land. Permission must be provided on the form submitted to the department as part of the application process, or on the department-authorized form for additional site location. If the pumpings are to be applied to land owned by the owner of the land on which they were generated, the pumper shall keep a permission slip or signed receipt as specified in [NEW RULE IV].

(10) A pumper shall control litter at land application sites as necessary to prevent its spread to adjoining properties.

(11) A person may not apply bulk septage to agricultural land, forest land, pasture land, or range land at a rate greater than the agronomic rate of the site for nitrogen on an annual basis.

(12) The annual application rate (AAR) for bulk septage, in gallons, is determined by the formula AAR=N/0.0026, where N equals the amount of nitrogen, in pounds per acre per 365-day period, needed by the crop or vegetation grown on the land.

(13) A person may not apply bulk septage at a reclamation site in excess of the agronomic rate unless the person first obtains site-specific approval from the department.

(14) A person may not apply pumpings to land where a threatened or endangered species or its designated critical

habitat is likely to be adversely affected.

AUTH: 75-10-1202, MCA
IMP: 75-10-1202, MCA

17.50.810 SPECIAL CONDITIONS; SEASONAL OPERATIONS

(1) A person may not apply pumpings to flooded, frozen, or snow covered ground if the pumpings will enter state waters.

(2) A person may not apply routine maintenance pumpings to frozen or snow covered ground, unless the tank from which the waste comes requires pumping more frequently than every six months and no waste water treatment plant that will take the waste is available within 25 miles of the point of generation.

(3) A person may apply emergency pumpings, including but not limited to, pumpings required due to septic system freeze-ups, overflows, flooding, or failures, to frozen or snow covered ground only if no other reasonable treatment method is available. Reasonable treatment method options include hauling the waste to a waste water treatment plant or a septage treatment or dewatering facility that will accept the waste and that is within 25 miles of the point of generation.

(4) Subject to the restrictions in (1) through (3), a person may apply pumpings to frozen or snow covered ground only if:

(a) sites or fields used have a slope of less than or equal to 2 percent;

(b) waste is applied at a rate of less than 10,000 gallons per acre;

(c) application occurs more than 500 feet from any surface water or wetland;

(d) the land is not within a 100-year floodplain; and

(e) bulk septage, and wastes subject to [NEW RULE VII], have undergone treatment by the vector reduction technique specified in [NEW RULE II(2)(c)] or, if not alkali stabilized, are incorporated into the soil as soon as the weather permits. Grease trap wastes must be incorporated into the soil as soon as the weather permits. Alkali stabilization of septage and wastes subject to [New Rule VII] is required unless the owner or the owner's authorized representative is unwilling to accept pH-stabilized wastes. If the wastes are not alkali stabilized, the pumper shall keep a signed written statement from the owner or authorized representative on file in conformance with [NEW RULE IV].

(5) If mechanical dewatering of septage is required, dewatering must be performed on the property from which the waste is to be removed, at a land application site approved in conformance with this subchapter, at a licensed solid waste management system, or at a permitted waste water treatment plant.

(6) Water removed from septage through a dewatering process is subject to septage disposal requirements. It may be:

(a) land applied as permitted under this subchapter for septage;

(b) discharged to a permitted wastewater treatment

facility;

(c) discharged to an engineered commercial septic system; or

(d) replaced in the individual septic system of origin.

(7) A person shall apply dewatered solids to land in conformance with this subchapter or compost or dispose of them in a licensed solid waste management system.

(8) Gray water may be land-applied at approved sites without vector or pathogen reduction only if it will not pollute state waters.

(9) A person using a truck to carry potable water and pumpings shall use separate tanks with no common wall for pumpings and potable water and shall comply with ARM Title 17, chapter 38, subchapter 5, which regulates water haulers.

~~(1)~~(10) The department may, in individual cases, place more or less restrictive criteria on septage treatment processes and individual land ~~incorporation~~ application and disposal sites, taking into account proximity to population centers, volume of septage, ~~and~~ soil types, ~~and considering the objectives of protecting public~~ protection of human health and the environment, and the avoidance of ~~avoiding~~ public nuisances.

AUTH: 75-10-1202, MCA
IMP: 75-10-1202, MCA

4. The proposed new rules provide as follows:

NEW RULE I LICENSURE; LICENSE APPLICATION; ANNUAL RENEWAL

(1) Except as provided in 75-10-1210, MCA, a person may not engage in the business of cleaning cesspools, septic tanks, portable toilets, privies, grease traps, car wash sumps, or similar treatment works, or disposal of septage and other wastes from these devices, unless licensed by the department. A person wishing to engage in any of these businesses shall submit an application for a license to the department on a form provided by the department. A person wishing to renew a license shall do so on the form provided by the department. The following information, if applicable, must be provided:

(a) the full name and physical business address of the applicant;

(b) the mailing address of the applicant, if different from the physical address;

(c) a list of all counties in which business is to be conducted;

(d) a list of all disposal sites, not exempted under 75-10-1210(2), MCA, that the applicant proposes to use; and

(e) the estimated volume of septage to be disposed of at each disposal site annually.

(2) For each disposal site proposed for use by the applicant that must be listed under the requirements of 75-10-1212(2)(d), MCA, including land application sites, wastewater treatment facilities, and solid waste management systems, and that is not exempt under 75-10-1210(2), MCA, the applicant or license holder shall submit the following information on a form

approved by the department:

(a) the name of the owner of the property;

(b) the street address or directions to the site;

(c) the location of the property by township, range, section, and quarter section(s) or the latitude and longitude of the property in degrees, minutes and seconds;

(d) the type of vegetation on the land application area (i.e., fallow land, pasture, range, forest);

(e) the estimated depth to seasonally high groundwater at the land application site, and the basis for the estimates;

(f) a statement of the general soil type (example: clay, gravel, sandy loam) at each land application site;

(g) the approximate slope of the application area;

(h) the distance to surface water and intermittent drainages;

(i) the acreage available for land application;

(j) the volume of material to be placed annually on the site;

(k) the present uses of lands adjacent to each land application site;

(l) the zoning classification, if any, for each land application site and the allowed uses for the classification;

(m) a proposed disposal operation and maintenance plan for each land application site including provisions for access control, if necessary;

(n) certification by a local health officer or a designated representative that the proposed land application site meets all applicable state and local requirements; and

(o) the signature of the land owner, facility operator, or designated representative of the owner or operator, granting permission to use the site for land application, disposal, or treatment.

(3) During the term of a license, the licensee may, after fulfilling the requirements of (2) of this rule, add new disposal sites to the service area with the written approval of the department.

(4) An applicant shall pay the license or renewal fee required under 75-10-1212, MCA, to the department at the time the applicant submits the license or renewal application to the department.

(5) The department shall mail to each license holder an annual renewal form by November 15 of each calendar year. The renewal form must provide for the submission of information required in (1) of this rule.

(6) The department shall mail to each county health officer or designated representative by February 15 of each calendar year a list of license holders operating in that county who have renewed their licenses by January 31 of that year. The list must include the renewed and added disposal locations for each license holder operating in the county.

(7) The department shall, within five days after receiving a renewal form and applicable fees, notify the county health officer or designated representative of license holders who renew their licenses after January 31 of the year after the

license expires.

(8) A person may not renew a license after April 1 of the year after the license expires.

AUTH: 75-10-1202, MCA
IMP: 75-10-1202, 75-10-1211, 75-10-1212, MCA

NEW RULE II OPERATION AND MAINTENANCE REQUIREMENTS FOR LAND APPLICATION OR INCORPORATION OF SEPTAGE (1) A person may not apply bulk septage, bulk materials derived from septage, or septage or materials derived from septage sold or given away in a bag or other container, to public contact sites or home lawns or gardens unless the materials to be applied satisfy the pollutant concentration requirements in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and at least one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(8).

(2) A person may apply bulk septage, bulk materials derived from septage, or septage or materials derived from septage sold or given away in a bag or other container not meeting the requirements of (1) of this rule only to agricultural land, forest land, or reclamation sites, and only if the person first performs one of the following vector attraction and pathogen reduction methods:

(a) injection below the surface of the land so no significant amount remains on the land surface within one hour after injection;

(b) incorporation into the soil surface plow layer within six hours after the application;

(c) addition of alkali material so that the pH is raised to and remains at 12 or higher for a period of at least 30 minutes; or

(d) management as required by ARM 17.50.810 when the ground is frozen.

(3) A person may not apply bulk septage, bulk materials derived from septage, or septage or materials derived from septage sold or given away in a bag or other container that do not meet the requirements of (1) of this rule unless the use of the site is restricted so that:

(a) food crops with harvested parts that touch the septage/soil mixture and are totally above the land surface are not harvested for 14 months after application;

(b) food crops with harvested parts below the surface of the land are not harvested for 20 months after application of material if the material remains on the land surface for four months or longer prior to incorporation into the soil;

(c) food crops with harvested parts below the surface of the land are not harvested for 38 months after application of material if the material remains on the land surface for less than four months prior to incorporation into the soil; and

(d) other food crops, feed crops, and fiber crops are not harvested for 30 days after application.

(4) The following additional restrictions apply if bulk septage, bulk materials derived from septage, or septage or

materials derived from septage sold or given away in a bag or other container that do not meet the requirements of (1) of this rule are applied to land and have not been treated with alkali as in (2)(c) of this rule:

(a) animals may not be permitted to graze on the land for 30 days after application of the material;

(b) turf grown on the land may not be harvested for one year after application of the material if the harvested turf is to be placed on land with a high potential for public exposure or on a lawn, unless otherwise specifically authorized by the department;

(c) public access to land with high potential for public exposure must be restricted for one year after application; and

(d) public access to land with a low potential for public exposure must be restricted for 30 days after application.

(5) Septage and material derived from septage may be disposed of in a Class II disposal unit licensed by the department pursuant to ARM Title 17, chapter 50, subchapter 5, if it first has been dewatered so it is no longer a bulk liquid.

(6) Septage may be placed in an active sewage sludge management unit at a permitted wastewater treatment facility only if the facility is designed and operated to handle septage in a manner protective of human health and the environment and in conformance with Circular DEQ 2, Design Standards for Wastewater Facilities.

(7) A person may not dispose of septage or material derived from septage other than by landfilling or composting at a licensed solid waste management facility, in conformance with the requirements of this rule, or in a permitted treatment works, unless the licensee or applicant has first applied in writing and obtained the department's written determination that the proposed disposal methods are at least as protective of human health and the environment as the methods permitted under this subchapter.

AUTH: 75-10-204, 75-10-1202, MCA
IMP: 75-10-204, 75-10-1202, MCA

NEW RULE III INSPECTIONS AND ENFORCEMENT (1) The department and local health officers or local designated health representatives may conduct inspections of proposed disposal facilities for septage and other wastes regulated under this subchapter.

(2) The department may inspect disposal sites and appropriate records to determine if a violation of Title 75, chapter 10, part 12, MCA, or this subchapter is occurring or has occurred.

AUTH: 75-10-204, 75-10-205, 75-10-1222, MCA
IMP: 75-10-204, 75-10-1211, 75-10-1220, 75-10-1222, MCA

NEW RULE IV RECORDKEEPING REQUIREMENTS (1) A licensee shall maintain the following records with the following information at the place of business indicated on the license

application or other department-approved location:

(a) type of material deposited at each disposal location;

(b) location of each disposal site, by street address, latitude and longitude, or township, range, section and quarter section;

(c) volume of each material deposited at each site, such as septage, grease trap wastes, sump pumpings, and wastes subject to [NEW RULE VII];

(d) number of acres to which pumpings are applied;

(e) date and time of each application;

(f) nitrogen requirement for the crop or other vegetation grown on each site;

(g) rate at which the different kinds of pumpings are deposited at each site in gallons per acre during a year;

(h) vector attraction and pathogen reduction method used for each volume of pumpings applied;

(i) pH of the material 30 minutes after alkali addition, if that method is chosen for pathogen and vector attraction reduction; and

(j) records of land owner objections to application of alkali-stabilized septage.

(2) Licensees shall retain disposal and land application records for at least five years.

(3) Licensees shall make the records required in this rule available for inspection by the department during reasonable business hours.

AUTH: 75-10-1202, MCA
IMP: 75-10-1202, MCA

NEW RULE V CAR WASH SUMPS AND OTHER SUMP WASTES (1) A person may not remove or dispose of waste from a car wash sump or other sump unless the person is licensed by the department or is an owner, operator, or employee of the facility. The use of contract labor is prohibited unless the person performing the labor is licensed under this subchapter.

(2) A person may not use rental equipment to pump a car wash sump or other sump unless the person is licensed by the department or is the owner, operator, or employee of the facility.

(3) A person may not pump or dispose of wastes from any type of sump other than a car wash sump unless the person has first applied to the department and received its approval. On receipt of such an application, the department shall conduct a case-by-case evaluation to determine acceptable waste management strategies. The department shall consider the source of the waste and the possible constituents when making the determination.

(4) Waste from an automated car wash bay sump may be used as clean fill or, if dewatered, as cover at landfills.

(5) Sump pumpings from attended car wash bays that prohibit the use of chlorinated solvents and are free from visible oil and grease may, if the owner provides the pumper with a written statement that the material is solvent-free, be

used as clean fill or, if dewatered, as daily or intermediate landfill cover.

(6) Sump pumpings from an attended car wash bay that contain visible oil or grease may be landfarmed in accordance with applicable department rules at a licensed landfarm facility or, if dewatered, disposed of at a licensed Class II landfill with the operator’s permission.

(7) Sump pumpings from an attended car wash bay that do not prohibit the use of chlorinated solvents must be handled in the same manner as an unattended car wash bay sump.

(8) Sump pumpings from an unattended car wash bay must be visually examined for oil and grease and screened for chlorinated solvents or the owner must provide the pumper with a statement concerning the solvent-free status of the material. Screening may be done with commercially available field kits and test strips.

(9) Sump pumpings from an unattended car wash bay that do not contain visible oil or grease and are known to be free of chlorinated solvents, either by testing or knowledge of the material, may be used as clean fill or, if dewatered, as daily or intermediate landfill cover.

(10) Sump pumpings from an unattended car wash bay that contain visible oil or grease, but pass the chlorinated solvent screening or are excluded from the screening requirement by the owner's knowledge of the material, may be landfarmed in accordance with applicable department rules at a licensed landfarm facility or, if dewatered, disposed of at a licensed Class II landfill with the landfill operator’s permission.

(11) Sump pumpings that fail the chlorinated solvents screening test or cannot be excluded from the test by the owner's knowledge of the material, must be tested for volatile organic compounds (VOCs) by a method capable of detecting and quantifying at least one part per billion VOCs in the waste, screened for petroleum hydrocarbons by a method capable of detecting at least one part per million hydrocarbons, and tested for total chromium, lead, zinc, and cadmium content by a method capable of detecting and quantifying at least one part per million of each element. If free of contaminants above department action levels, the sump pumpings may be used as clean fill or, if dewatered, as daily or intermediate cover at landfills. If contamination is detected above action levels, the operator shall notify the department, and the department shall specify further testing requirements and waste disposal options.

(12) Wastes removed from unattended car wash sumps that must undergo further testing must be stored in a manner to prevent contamination of the environment until the operator receives testing results and disposes of the wastes. For example, storage may be in lined ponds, holding tanks, or concrete bins.

(13) A pumper shall retain all testing results for at least five years and make them available to the department upon request.

(14) Operators of facilities receiving sump waste may, before accepting waste, require a pumper to perform additional

testing.

AUTH: 75-10-204, 75-10-1202, MCA
IMP: 75-10-112, 75-10-204, 75-10-1202, MCA

NEW RULE VI GREASE TRAP WASTES (1) For the purpose of this rule, "grease interceptor" and "grease trap" mean grease trap. Oil/water separators at commercial and industrial facilities are not grease traps.

(2) Grease trap waste may not be discharged to a treatment works not specifically designed to manage the waste.

(3) Grease trap waste may be dewatered at a permitted wastewater treatment works designed in conformance with Circular DEQ 2, Design Standards for Wastewater Facilities, a solid waste management system licensed in conformance with Title 75, chapter 10, part 2, MCA, or at a land application site approved in conformance with this subchapter.

(4) A person licensed under this subchapter may dewater grease trap waste where the waste is produced. An owner or lessee of property from which grease trap waste is removed may dewater grease trap waste on property owned or leased by the owner or lessee if the property has an area greater than five acres and if the dewatering does not constitute a nuisance or public health hazard and is not harmful to human health or the environment.

(5) The water from a grease trap dewatering process is commercial wastewater. It may be discharged to an individual commercial wastewater treatment system or approved wastewater treatment facility. The water may be land-applied at an approved septage land application site.

(6) Dewatered grease trap waste may be disposed of at a licensed Class II solid waste management facility.

(7) Grease trap waste, dewatered or not, may be:

(a) composted at a licensed compost facility;

(b) treated at a rendering plant; or

(c) land-applied under the following conditions:

(i) in accordance with [NEW RULE II(2)(a) or (b)] for disposal of septage; or

(ii) in accordance with ARM 17.50.810 when special conditions exist.

(8) The department may approve other methods for handling grease trap waste on a case-by-case basis. A person may not dispose of grease trap waste other than by landfilling at a licensed solid waste management system, management in conformance with this rule, or disposal in a permitted treatment works unless the person has first submitted a written application to the department and received the department's written determination that the proposed disposal methods are at least as protective of human health and the environment as the requirements of this subchapter.

AUTH: 75-10-1202, MCA
IMP: 75-10-1202, MCA

NEW RULE VII PRIVY WASTE; PIT TOILET WASTE; PORTABLE TOILET WASTE; VESSEL PUMPOUT FACILITY WASTE; AND RECREATIONAL VEHICLE DUMP STATION WASTE (1) Vessel pumpout facility waste must be managed in accordance with 23-2-522(2), MCA, and rules adopted under that section, and must be disposed of by a licensed septic tank pumper.

(2) A person may not pump wastes from a recreational vehicle dump station not connected to an approved wastewater treatment facility unless the person is licensed under this subchapter.

(3) A person may not place privy wastes, pit toilet waste, portable toilet waste, marine pumpout facility waste or recreational vehicle wastes in a wastewater treatment system with a cesspool.

(4) A person may not place privy wastes, pit toilet waste, portable toilet waste, marine pumpout facility waste or recreational vehicle wastes in a wastewater treatment system with a septic tank, unless the septic tank and connected liquid treatment system was designed for this purpose by a professional engineer licensed to do business in Montana.

(5) No person may land-apply privy wastes, pit toilet waste, portable toilet waste, marine pumpout facility waste or recreational vehicle wastes unless the following conditions are met:

(a) pathogen reduction, vector attraction reduction, and site restriction criteria for disposal of septage are in accordance with [NEW RULE II];

(b) the requirements of ARM 17.50.810 for special conditions have been met; and

(c) the wastes are screened or sorted before or during application to remove large non-putrescible wastes. The non-putrescible wastes must be disposed of in a Class II solid waste management facility licensed in accordance with 75-10-221, MCA.

(6) The maximum annual application rate (AAR) for these wastes, in gallons, is determined by the formula AAR=N/0.0052, where N equals the amount of nitrogen in pounds per acre per 365-day period needed by the crop or other vegetation grown on the land.

AUTH: 75-10-1202, MCA
IMP: 75-10-1202, MCA

NEW RULE VIII INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED DOCUMENTS (1) The department hereby adopts and incorporates by reference:

(a) Circular DEQ 2, Design Standards for Wastewater Facilities (1999 ed.), which sets forth design standards for wastewater facilities;

(b) Method 9095 (the Paint Filter Liquids Test) in Manual SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA (Update IIIA); and

(c) 40 CFR 503.13(b)(3), which sets forth pollutant concentration requirements, 40 CFR 503.32(a), which sets forth Class A pathogen reduction requirements, and 40 CFR 503.33(b)(1)

through (b)(8), which set forth vector attraction reduction requirements.

(2) Copies of materials adopted and incorporated by reference in this subchapter may be obtained from the Community Services Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901, phone: (406) 444-4400.

(3) Copies of sections of the Code of Federal Regulations (CFR) cited in this subchapter and Method 9095 (the Paint Filter Liquids Test) in Manual SW-846 also may be obtained from the Superintendent of Documents, US Government Printing Office, Washington, DC 20402; or from the Environmental Protection Agency's internet website at http://www.epa.gov.

AUTH: 75-10-1202, MCA.
IMP: 75-10-1202, MCA.

NEW RULE IX LICENSE DENIAL OR REVOCATION; APPEAL

(1) Pursuant to 75-10-1221, MCA, the department may issue an order denying or revoking a license. The department shall serve written notice of an order of denial or revocation, by certified mail, on the applicant or licensee or the agent of the applicant or licensee. The notice must contain the finding required in 75-10-1221, MCA. Service is complete on the date of mailing.

(2) An order denying or revoking a license becomes final 30 days after service unless, within that time, the applicant or licensee requests a contested case hearing before the board.

AUTH: 75-10-1202, MCA
IMP: 75-10-1221, MCA

5. The rules proposed for repeal are as follows:

17.50.805 LICENSURE; DURATION OF LICENSE; FEES (AUTH: 37-41-103, MCA; IMP: 37-41-201, 37-41-202, MCA), located at page 17-4529, Administrative Rules of Montana.

17.50.807 INSPECTIONS AND ENFORCEMENT (AUTH: 37-41-103, MCA; IMP: 37-41-212, MCA), located at page 17-4530, Administrative Rules of Montana.

17.50.808 OPERATION AND MAINTENANCE REQUIREMENTS (AUTH: 37-41-103, 75-10-204, MCA; IMP: 37-41-103, 75-10-204, MCA), located at page 17-4535, Administrative Rules of Montana.

6. The Department is proposing the rule amendments, new rules, and repeal of rules to implement legislative changes made in 1999 concerning regulation of persons pumping septic tanks and to coordinate management of septic waste with the Montana Solid Waste Management Act, Title 75, chapter 10, part 2, MCA. The 1999 legislature repealed the Montana Cesspool, Septic Tank and Privy Cleaners Act, in Title 37, chapter 41, MCA, and replaced it with statutes governing septic disposal that are codified with other statutes governing environmental quality in

Title 75, chapter 10, MCA. See, 1999 Laws of Montana, Chapter 378. The new statutes are found in Title 75, chapter 10, part 12, MCA. This change reflects the general reorganization by the 1995 legislature that formed the Department of Environmental Quality from three separate departments.

The new statutes require the Department to adopt rules governing disposal of waste from cesspools, septic tanks, portable toilets, and other similar treatment works that receive industrial wastewater or grease removed from grease traps, and the waste removed from the grease trap itself. The new statutes also require the Department to adopt rules concerning pathogen and vector reduction, and recordkeeping when waste materials are applied to agricultural land, forest land or reclamation sites or are placed in an active sewage sludge unit. See, section 75-10-1202, MCA.

The proposed amendments and new rules providing that septic tank waste, privy waste, and other similar waste may be placed in a wastewater treatment plant, land-applied for beneficial use, or, if dewatered, placed in a landfill, also reflect changes in federal regulations made in 1993. These amendments and new rules are necessary to conform Montana's rules with federal requirements regulating land application of septic tank pumpings.

The statements of reasonable necessity for the proposed amendments and new rules and the repeal of rules are as follows:

ARM 17.50.801:

The proposed amendments to ARM 17.50.801 would add specific language concerning the purpose of the subchapter, reflecting addition of requirements concerning grease trap waste, privy waste, car wash sump waste and other similar wastes. The amendments would also clarify that the purpose of the rules is protection of human health and the environment and preservation of private and public property rights. These changes are necessary to reflect the intent of the legislature and the other proposed amendments and new rules.

ARM 17.50.802:

Section 75-10-1201, MCA, specifies several definitions that apply to the new statutes. The proposed amendments to ARM 17.50.802 would add definitions needed in the subchapter, delete definitions for phrases no longer in use, and rearrange the definitions. The additional definitions are needed to provide clarification to the regulated community. They conform to definitions found in the federal regulations concerning land application of septage, the Uniform Plumbing Code, and Department rules governing wastewater treatment facility design. The definitions would also be placed in alphabetical order.

ARM 17.50.806:

Under section 75-10-1202(1), MCA, the rules must include

procedures for issuance, denial, and renewal of licenses. The proposed amendments to ARM 17.50.806 would require the Department to review an application for a new license, and issue a license, within 30 days after receiving the application. The proposed amendments would require the Department to notify the local health officer, or designated representative, in each county in which an applicant proposes to do business, up to five days to comment on the application prior to issuing a license. These amendments are necessary to ensure that licenses are processed in a timely manner while still granting local authorities the right of reasonable input into issuance of licenses.

The amendments would clarify that license conditions may include requirements to protect the environment and that, in issuing a license, the Department may consider human health and nuisance issues. These amendments are necessary to ensure that the Department considers protection of human health and the environment in licensing decisions. The proposed amendments would delete the right of a pumper to appeal certain license conditions. This appeal is no longer authorized by statute. The amendments also would make minor grammatical changes and strike outdated cross-references.

ARM 17.50.809:

Under Section 75-10-1202(2), MCA, the rules must include requirements that provide for sanitary disposal of septage, including application of septage to agricultural land, forest land, and reclamation sites and standards governing rates of application. The proposed amendments to ARM 17.50.809 would clarify the requirements for protection of state waters and would set standards for land application of wastes. Previously adopted requirements for setback from buildings, wells, and roads would be retained. The proposed amendments would regulate distance to state surface waters, slope applications, ground water separation, and litter control. Land owner (or designated agent) permission would be required for land application sites. Permission from the appropriate government agency or tribe would be required for application on land leased from an agency or tribe. The proposed amendments would provide that the application rate may not exceed the rate of plant usage on the site, but that, at reclamation sites, the Department may, on a site-specific basis, approve application at rates greater than the plant uptake rate. Application of waste that would adversely affect a threatened or endangered species would be prohibited under the proposed amendments.

These amendments are necessary to protect state waters from nitrate pollution by setting reasonable setback requirements and ensuring that application rates do not exceed the ability of the soil and plants to absorb and use the applied wastes. The amendments would protect property rights by ensuring that permission to use a site has been granted to the pumper. The proposed litter control requirement is necessary to protect adjacent property owners from the adverse effects of litter from

the application site. Their rights would also be protected by the setback requirements. Use of governmental and tribal property without express, written consent has been a problem in the recent past, and the proposed amendments would require this consent. To protect threatened and endangered species, the proposed amendments would prohibit use of critical habitat for waste application. Sufficient land not designated as critical habitat exists for application of septage in Montana, so this restriction should not adversely affect pumpers.

ARM 17.50.810:

The proposed amendments to ARM 17.50.810 would allow application of pumpings to frozen or snow covered ground and in other special situations if no wastewater treatment plant is available within 25 miles and the tank requires frequent pumping, such as a holding tank, or in an emergency. Emergencies would include freeze-ups and other situations such as backups, field failures, flooding, etc. For land application to frozen ground, the maximum allowable site slope would be 2 percent, with a maximum application rate of 10,000 gallons per acre, a setback distance of 500 feet to surface water or wetlands, and a prohibition on application within a 100-year floodplain. Septage, privy, portable toilet and other similar wastes would have to be alkali-stabilized unless the owner or authorized representative prohibited this in writing. The proposed amendments would delay incorporation of wastes that are not alkali-stabilized until the land can be plowed.

The proposed amendments would require that, when mechanical dewatering of septage is required, it is done at the property of origin, at a licensed waste management facility, or an approved wastewater treatment facility. The water from a dewatering operation would have to be land-applied in conformance with the subchapter, sent to a permitted wastewater treatment facility, placed in an engineered commercial septic system, or replaced in the septic system of origin. Grey water could be placed on land application sites without tilling or liming. Septage could be transported only in separate containers from potable water.

Previously adopted ARM 17.50.810(1), allowing Department flexibility for individual sites, would be retained but renumbered. The wording would be changed slightly to reflect the Department's primary mission of protecting human health and the environment, rather than protecting public health, which was the mission of the Department of Health and Environmental Sciences, one of the Department's predecessor agencies.

These proposed amendments are necessary to protect state waters from waste that may be transported during runoff from frozen or snow covered ground. Prohibiting routine application of pumpings to frozen ground is necessary because there is little agronomic uptake by plants in the winter and the large amount of nitrogen from winter application may contaminate ground water in the spring before plants are active. Routine maintenance pumpings should be done only when plants can use the nutrients. Emergency pumpings would be permitted under the

proposed amendments. Provisions governing setbacks from surface water, application rates and the maximum slope allowed at sites and prohibiting application in a 100-year floodplain are also necessary to protect state waters.

Alkali (lime) stabilization of winter pumpings is preferred for vector and pathogen reduction. However the proposed amendments would allow early spring surface incorporation at remote sites where the landowner refuses to allow addition of lime to the pumpings. Frozen wastes present substantially lower risk of pathogen transmittal because the primary vector involved, the fly, is not active in the winter. These provisions are consistent with previous guidance from the U.S. Environmental Protection Agency (EPA) on winter application.

Mechanical dewatering of septic tank and other pumpings may become more common in Montana as the availability of land application declines due to population growth in rural areas near urban areas. The proposed amendments would provide reasonable alternatives for handling dewatered septage and processed water. The proposed amendments also would allow land application of gray water without tilling or liming. This is a reasonable management practice because of the low amounts of organic matter in gray water. These dilute solutions, which contain primarily soap, have low vector attraction and are relatively pathogen-free. The proposed provision requiring separation of pumpings from potable water is necessary to protect human health, as tanks with a common wall may develop undetected leaks, thus contaminating the potable water. The retained provision, allowing the Department site-specific flexibility, is proposed to be modified to require the Department to consider the environmental and health effects of any proposed site-specific changes. This is consistent with the mission of the Department and Article II, Section 3, of the Montana Constitution, which protects all persons' right to a clean and healthful environment.

New Rule I:

Under Section 75-10-1202(1), MCA, the rules must include procedures for issuance, denial, renewal, and revocation of licenses. Under Section 75-10-1211, MCA, a license application must contain: the full name and business address of the applicant; a list of the counties in which business is to be conducted and a list of disposal sites that the applicant intends to use during the permit year; for each disposal site, a certification by a local health officer, or a designated representative, in the county in which the site is located, that the site meets all applicable state and local requirements; written permission to use each proposed disposal site signed by the owner, manager, or other person authorized to give permission to use the site; and any additional information required by rule.

Section 75-10-1212, MCA, provides that a license expires on December 31 of each calendar year, is not transferable and expires when the licensee ceases to do business. Under that

section, a license is renewable in accordance with rules adopted by the Department and upon receipt of an application on a form provided by the Department that contains: the full name and address of the licensee, a list of counties in which business is to be conducted; a list of disposal sites that the licensee intends to use; for each new disposal site, a certification by the local health officer or representative, in the county in which the disposal site is located, that the site meets all applicable state and local requirements, and written permission to use the site signed by the owner, manager, or other person authorized to give permission to use the site; and any additional information required by rule.

Proposed New Rule I would specify the information required on the license application, disposal site, and license renewal forms. The new rule would require the Department to provide license holders with renewal forms on a timely basis and require the Department to notify county sanitarians of license holders who have renewed their licenses in that county. Signature of the sanitarian, certifying site suitability, and permission from the owner or authorized agent, would be required on the disposal site form. The proposed rule would allow inclusion of additional sites during the license year.

The information provided on these forms must be sufficient for the Department to identify the license holder, evaluate disposal sites and protect the environment. County sanitarians, who are responsible for local approval of land application sites, must be made aware of persons in their counties who have valid licenses. Formerly, this was accomplished by requiring the signature of the sanitarian for license renewal applications and each disposal site annually, as well as on the initial application. While deletion of the annual signature requirement simplifies license renewal for the license holder, sanitarians still require timely notice of licenses and active disposal sites within their jurisdictions.

Under the proposed new rule, license fees would be due at the time of application. This is necessary to cover the Department's costs in reviewing the application. Section 75-12-1212(4), MCA, provides that the Department shall collect a late fee from any person operating a pumping or disposal business who fails to submit a license renewal fee between January 1 and April 1 of a renewal year. The proposed new rule would set April 1 as the deadline for license renewal.

<u>New Rule II</u>:

Under Section 75-10-1202(2)(c)(i) and (ii) and 75-10-1202(3), MCA, the rules must include land application standards and restrictions, including pathogen restrictions and treatment requirements and vector attraction reduction requirements. Proposed New Rule II would establish operation and maintenance requirements for land application of septage and materials derived from septage, including requirements for vector and pathogen reduction and site restrictions.

The new rule would require dewatering prior to trenching or

burial of septage at a Class II landfill. Septage also could be placed in a properly designed sludge management unit at an approved wastewater treatment facility. The proposed new rule would allow a pumper to use a new technology if the pumper demonstrates that the alternative practice poses no danger to human health and the environment. New Rule II also would impose reasonable restrictions on land access, grazing, and food harvest from lands used for application of septage. These requirements are necessary to protect human health and the environment from the potential adverse results of land application of septage. New Rule II would be consistent with federal regulations found in 40 CFR Part 503, promulgated by EPA under the Clean Water Act, and with the solid waste management requirements found in ARM Title 17, chapter 50, subchapter 5.

<u>New Rule III</u>:

Under Sections 75-10-1220 through 75-10-1222, MCA, the Department is responsible for enforcing the septage pumping and disposal requirements. Proposed New Rule III would allow the Department or local health officers, or their designated representatives, to inspect proposed disposal sites. Local health authorities may refer violations to the Department for enforcement. The proposed new rule is necessary to ensure that the Department and local health authorities can perform the site approval, inspection and enforcement duties required of them under Title 75, chapter 10, part 12, MCA.

<u>New Rule IV</u>:

Under Section 75-10-1202(2)(c) and (3)(c), MCA, the rules must include requirements for keeping records concerning land application and placement of septage on a surface disposal site. Rule IV would include recordkeeping requirements for licensees. The rule would require a licensee to maintain, and keep for at least five years, records of the type, volume, and application rate of material, the deposit location, site nitrogen requirements, the time of application and vector attraction and pathogen reduction methods used for each load. The rule would require that these records be available for inspection during reasonable business hours.

New Rule IV is necessary for enforcement of the operation and maintenance requirements. The Department must be able to determine whether vector attraction and pathogen reduction requirements have been met for each load of material. To prevent possible contamination of state waters, including ground water, the Department also must be able to determine whether application rates are consistent with site nitrogen requirements. The proposed new rule also is consistent with federal requirements found in 40 CFR Part 503.

<u>New Rule V</u>:

New Rule V would include requirements concerning pumping,

sampling, and disposal of waste from car wash sumps and other similar sumps. Car wash sumps would be separated into three categories, with different testing and disposal requirements for each category. The three categories are based on the risk of hazardous material placement at the different kinds of facilities. The new rule would require a sump pumper to be licensed by the Department unless the pumper is the owner, operator, or direct employee of the owner or operator of the facility. The Department would evaluate wastes from sumps other than car washes on a case-by-case basis.

Under the proposed new rule, disposal facilities could require additional testing before accepting sump pumpings. Facilities receiving waste should be allowed to determine the risks they are willing to assume by taking the waste. Also, this provision is consistent with the powers of local government regarding waste management, found in section 75-10-112, MCA.

The proposed new rule would establish minimum testing and disposal requirements for sump wastes, based on the risk these wastes pose to human health and the environment. This is necessary to prevent unlawful disposal of solid wastes or hazardous materials. Unattended car washes have a high potential for abuse. They are frequently used for degreasing engines and other automotive parts; these activities often involve use of caustic or hazardous solvents. The proposed new rule would require screening of wastes from these facilities for the presence of the most common contaminants: chlorinated solvents, oil, and grease. These inexpensive screening tests should determine the wastes that are subject to solid or hazardous waste handling requirements upon further testing, and the wastes that are excluded from regulation. Screening for chlorinated solvents would not be required when the owner or operator knows that no regulated chlorinated solvents have been used in the facility.

To provide the Department with the ability to regulate disposal of waste from sumps and protect public health and the environment, the proposed new rule would require a person to obtain a license to pump these types of sumps. Similar to the septage pumping license exemption in Section 75-10-1210(2), MCA, the new rule would exclude owners and operators of car washes from this licensing requirement.

Proposed New Rule V would allow the Department to set testing and disposal requirements for waste from other types of sumps on a case-by-case basis. This is needed because of the wide variety of sump wastes in Montana. It would be difficult, if not impossible, to craft a rule that would cover all contingencies.

<u>New Rule VI</u>:

Under Section 75-10-1202(3)(d), MCA, the rules must include requirements for disposal of waste from grease traps. Proposed New Rule VI would set standards for managing waste from grease traps. It would prohibit discharge of grease trap waste to treatment works not engineered to treat the waste. It would

allow for dewatering of grease trap waste and disposal of grease trap waste.

Grease trap wastes can be separated into a semisolid and a liquid fraction. Under New Rule VI, the semisolid fraction could be landfilled, land-applied, or composted. The liquid fraction could be land-applied or treated in an appropriate wastewater treatment facility. Whole grease trap waste could be land-applied, rendered, or composted. The proposed rule would allow the Department to approve other methods of handling grease trap waste on a case-by-case basis.

If mismanaged, grease trap waste can pose threats to human health and the environment. Grease can attract vectors and pollute ground and surface waters. Grease trap waste is not subject to the alkali addition vector and pathogen reduction requirement because addition of alkali to grease can turn the material into soap.

The proposed new rule would protect wastewater treatment facilities from the effects of grease trap waste by prohibiting placement of wastes into a facility unable to handle the waste. To improve the operation of wastewater treatment facilities, grease traps are designed to remove grease before it reaches wastewater treatment facilities. It would be counterproductive to allow the separated wastes to be placed into the wastewater facility.

Under the proposed new rule, dewatering of grease trap waste, when required, must occur at a regulated wastewater facility or solid waste management facility, or at an approved land-application site. This is necessary to protect human health and the environment by providing areas of concentrated waste management for Department oversight. Under the proposed new rule, dewatering of individual grease traps on-site, or at a location owned or leased by the restaurant operator, would be allowed when there is sufficient property available and the operation will not be a nuisance or hazard to human health or the environment.

Under New Rule VI, once grease passes the standard test for landfilling, i.e., it is not a bulk liquid, it could be removed to an approved Class II solid waste management system. Grease trap waste, dewatered or not, could be composted or rendered. Land-application of grease trap waste also would be allowed in a manner consistent with septage methods allowed in New Rule II or case-by-case Department-approved methods. This would enable generators to manage waste less expensively when they have sufficient land available. Land-application of grease trap waste, in the same manner as septage, is a reasonable method of handling this type of waste.

<u>New Rule VII</u>:

Under Section 75-10-1202(3)(d)(i), MCA, the rules must include requirements for disposal of waste from portable toilets. Proposed New Rule VII would include requirements for disposal of waste from privies, pit toilets, portable toilets, vessel pumpout facilities, and recreational vehicle dump

stations. The new rule would require that these wastes be managed by licensed pumpers in a manner similar to management of septic tank pumpings. The maximum allowed land-application rate would be one-half the rate for septic tank pumpings.

New Rule VII is necessary to protect human health and the environment from the potential risks to human health and the environment posed by this type of waste. This waste is similar to septic tank waste but normally contains a higher percentage of nitrogen and often contains disinfectants and deodorants. The proposed new rule would account for this by halving the land application rate. This would still allow land-application on an average site of over 7,000 gallons of pumpings per acre, annually.

Because of the disinfectants normally present in this waste, it poses problems if placed in a septic system not specifically engineered to accept this higher strength of waste in large quantities at one time. Therefore, the proposed new rule would prohibit placement of this waste in a non-engineered septic system. To provide adequate treatment for the waste and prevent ground water contamination, the new rule also would not allow disposal of this waste in a cesspool. Large non-putrescible objects, such as cans and bottles, are often thrown into privies. These objects are contaminated with human waste and must be properly managed. Appropriate management of this waste is disposal in a Class II landfill.

New Rule VIII:

Under New Rule VIII, the Department proposes to adopt and incorporate by reference Department Circular DEQ 2, concerning design standards for wastewater facilities, the Paint Filter Liquids Test (Method 9095 in the United States Environmental Protection Agency's Manual SW-846), which sets forth a method for determining whether a sample has been dewatered, and portions of three federal regulations, 40 CFR 503.13(b)(3), which sets forth pollutant concentration requirements, 40 CFR 503.32(a), which sets forth Class A pathogen reduction requirements, and 40 CFR 503.33(b)(1) through (b)(8), which set forth vector attraction reduction requirements.

It is necessary to adopt and incorporate Department Circular DEQ 2 by reference because New Rule II(7) provides that septage may be disposed of at wastewater treatment plants designed pursuant to Circular DEQ 2. In addition, New Rule VI(3) provides that grease trap waste may be dewatered at a permitted wastewater treatment works designed in conformance with Circular DEQ 2. Circular DEQ 2 sets forth design standards for wastewater facilities and standards for handling and treatment of septage at wastewater treatment plants.

It is necessary to adopt and incorporate the paint filter liquids test (Method 9095 in EPA Manual SW-846) by reference because the paint filter liquids test is a simple test, not already in Department rules, that may be used to determine when a waste has been dewatered. The term "dewatered" in ARM 17.50.802(10) refers to the paint filter liquids test to

determine when a waste has been dewatered. The term "dewatered" is then used throughout these rules to allow dewatered wastes to be managed differently from wastes containing liquid. The distinction is important because liquid wastes are more likely than dewatered wastes to travel down to and pollute groundwater. Also, landfills are prohibited from receiving bulk liquids and this test allows the solid portion to be managed at solid waste landfills.

It is necessary to adopt 40 CFR 503.13(b)(3), 40 CFR 503.32(a), and 40 CFR 503.33(b)(1) through (b)(8) because they establish standards for the reduction of pollutant concentrations, pathogens, and disease vectors that must be met for safe application of septage or related materials.

It would be unduly cumbersome, expensive, and inexpedient for the Department to adopt these regulations and documents verbatim rather than by reference.

New Rule IX:

In New Rule IX(1), the Department proposes to adopt a procedure for denying and revoking licenses. The Department would be required, when revoking or denying a license, to issue a written order and to serve the order on the applicant or licensee by certified mail. The order must contain the finding required in section 75-10-1221, MCA, that the business or disposal site cannot be or is not being operated in compliance with Title 75, chapter 10, part 12, MCA, or a rule or order issued under that part. The Department proposes in New Rule IX(2) to adopt 30 days as the time in which an order of denial or revocation becomes final if not appealed. For the hearing on an appeal of a license denial or revocation that is required in section 75-10-1221, MCA, the Department proposes in New Rule IX(2) to clarify that it must be conducted as a contested case.

New Rule IX is necessary because, under section 75-10-1202, MCA, the Department is required to adopt rules providing procedures for license denial and revocation. The substance of the procedure is spelled out in section 75-10-1221, MCA, and the Department is not repeating the statutory language in the rule. The Department is clarifying that the denial or revocation must be contained in an order, that the order must be served by certified mail, and that service is effective on the date of mailing. These requirements are identical to the requirements for issuance and service of enforcement orders in section 75-10-1222, MCA, afford due process, and are consistent with other regulatory programs administered by the Department.

Because section 75-10-1221, MCA, does not state a time limit for the filing of an appeal, it is necessary for the Department to provide a time limit. The proposed 30-day time limit matches the time limits set for filing of appeals of other orders in the septic pumper statutes (section 75-10-1222(1) and (2), MCA), and for appeals of other solid waste orders (see section 75-10-227(1), MCA). A shorter time limit might not leave enough time for an applicant or licensee to make an informed decision whether to appeal, and a longer time limit

would cause too much delay, uncertainty, and potential environmental harm.

The provision that an appeal of a denial or revocation is to be conducted as a contested case is necessary to clarify the procedure to be followed. Section 75-10-1221, MCA, states that the hearing must be held pursuant to the provisions of the Montana Administrative Procedure Act (MAPA). The contested case provisions of MAPA, in Title 2, chapter 4, part 6, MCA, seem to be the only applicable sections of MAPA. The contested case provisions of MAPA and the procedural rules adopted under MAPA to be used in contested cases are familiar to the regulated community and the Department.

Repeal of ARM 17.50.805, 17.50.807 and 17.50.808:

The Department is proposing to repeal these rules because the 1999 legislature repealed the statutes that provided authority for the rules. Specifically, the legislature repealed Sections 37-41-101, 37-41-103, 37-41-104, 37-41-105, 37-41-201, 37-41-202, 37-41-205, 37-41-211, and 37-41-212, MCA.

7. The Department is also proposing to make minor editorial changes that are not intended to change the meaning of the existing rules.

8. 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 Mary Mackie, Paralegal, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901, no later than 5 p.m., January 11, 2001. 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 Mary Mackie, Paralegal, at "mmackie@state.mt.us", no later than 5 p.m., January 11, 2001.

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

10. 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.

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

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 November 27, 2000.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 17.8.323, pertaining to sulfur oxide emissions from primary copper smelters	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL (AIR QUALITY)

TO: All Concerned Persons

1. On January 23, 2001 at 1:30 p.m. in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a public hearing to consider the proposed repeal of the above-captioned rule.

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., January 16, 2001, 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 rule proposed for repeal is as follows:

17.8.323 SULFUR OXIDE EMISSIONS--PRIMARY COPPER SMELTERS (AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA), located at page 17-326, Administrative Rules of Montana.

4. In 1972, the Board's predecessor, the Board of Health and Environmental Sciences, adopted the primary copper smelter rule now found in ARM 17.8.323. The rule has remained unchanged since that time, except for minor amendments in 1981. Currently, there are no primary copper smelters operating in the state. However, it is necessary to repeal the rule because federal New Source Performance Standards (NSPS) have superseded the rule.

Under ARM 17.8.323, the maximum allowable sulfur oxide emissions from a copper smelter are based on total sulfur input. Total sulfur input is calculated as the aggregate sulfur content of all fuels or other feed materials whose products of combustion and gaseous by-products pass through the stack or chimney. The allowable sulfur emission rate, calculated in pounds per hour (lbs/hr), is 10% of the total sulfur input in lbs/hr. When total sulfur input reaches or exceeds 100,000 lbs/hr, allowable sulfur emissions are capped at 10,000 lbs/hr. However, for total sulfur input up to 100,000 lbs/hr, allowed sulfur oxide emissions increase with increases in the amount of fuel or feed material processed.

Under the NSPS for primary copper smelters, first promulgated on January 15, 1976, and found at 40 CFR Part 60, subpart P, primary copper smelters may not emit gasses that contain more than .065% by volume of sulfur dioxide. This standard applies to all primary copper smelters for which

construction or modification commenced or commences on or after October 17, 1974, and is more stringent than the emission limits allowed under ARM 17.8.323.

In issuing any air quality preconstruction permit for a new primary copper smelter, the Department would be required to include the NSPS limit. The Board has adopted and incorporated the NSPS limit by reference in ARM 17.8.302(1)(b), and ARM 17.8.710(2) provides in part that the Department may not issue an air quality permit unless the facility can be expected to comply with applicable regulations under the federal Clean Air Act.

Also, the graph captioned "Figure 1" in ARM 17.8.323 is no longer accurate. The graph was originally hand-drawn in 1972 and illustrated increasing allowable sulfur oxide emissions for increasing levels of total sulfur in feed. The original hand-drawn graph has been lost and there is no electronic version. The graph currently published with the rule is not accurate because of distortion to the logarithmic scales and the loss of some print from numerous duplications.

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 January 30, 2001. 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. January 30, 2001.

6. Kelly O'Sullivan 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 November 27, 2000.

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

In the matter of the proposed amendment of ARM 18.3.101 through 18.3.106 and 18.3.201 concerning debarment of contractors due to violations of department requirements and determination of contractor responsibility	)	NOTICE OF PUBLIC HEARING

TO: All Concerned Persons

1. On October 26, 2000, the Montana Transportation Commission and the Montana Department of Transportation published a notice at page 2860 of the 2000 Montana Administrative Register, Issue No. 20, of the proposed amendment of the above-captioned rules. The notice of proposed agency action is amended as follows because the required number of persons designated therein have requested a public hearing.

2. On December 29, 2000, at 9 a.m., a public hearing will be held in the Auditorium of the Department of Transportation building, 2701 Prospect, Helena, Montana, to consider the amendment of ARM 18.3.101 through 18.3.106 and 18.3.201 concerning the debarment of contractors due to violations of department requirements and determination of contractor responsibility.

3. The Commission and Department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5 p.m. on December 26, 2000, to advise us of the nature of the accommodation you need. Please contact Steve Garrison, Legal Services, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, call (406) 444-6093, or TTY users can call (406) 444-7696, fax (406) 444-7206, e-mail sgarrison@state.mt.us.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendments in writing, at the hearing. Written data, views or arguments may also be submitted to Timothy W. Reardon, Chief Counsel, Legal Services, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, and must be received no later than 5:00 p.m. on December 21, 2000.

5. Jodi Harrison has been designated to preside over and conduct the hearing.

6. The Department of Transportation maintains a list of interested persons who wish to receive notices of the 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 the subject area or areas of interest of the person requesting notice, including, but not limited to, rules proposed by the Administration Division, Aeronautics Division, Highways and Engineering Division, Maintenance Division, Motor Carrier Services Division, and Rail, Transit and Planning Division. Such written request may be mailed or delivered to the Montana Department of Transportation, Legal Services, P.O. Box 201001, Helena, MT 59620-1001, faxed to the office at (406) 444-7206, e-mailed to lmanley@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

MONTANA DEPARTMENT OF TRANSPORTATION
By:

/s/ Marvin Dye
MARVIN DYE, Director

MONTANA TRANSPORTATION COMMISSION
By:

/s/ Thorm Forseth
THORM FORSETH, Chairman

/s/ Lyle Manley
LYLE MANLEY, Rule Reviewer

Certified to the Secretary of State November 22, 2000.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.3.202, 4.3.204, 4.3.602 and 4.3.604 relating to loan qualifications	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 26, 2000, the Department of Agriculture published notice of the proposed amendment of ARM 4.3.202, 4.3.204, 4.3.602 and 4.3.604 relating to loan qualifications at page 2774 of the 2000 Montana Administrative Register, Issue Number 20.

2. The agency has amended ARM 4.3.202, 4.3.204, 4.3.602 and 4.3.604 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

By: /s/ W. Ralph Peck
Ralph Peck, Director
Montana Department of Agriculture

/s/ Tim Meloy
Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State November 27, 2000.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.12.219 and adoption of New Rules I through VIII relating to commercial feed	)	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On October 26, 2000, the Department of Agriculture published notice of the proposed amendment of ARM 4.12.219 and adoption of new rules I through VIII relating to commercial feed at page 2762 of the 2000 Montana Administrative Register, Issue Number 20.

2. The agency has amended ARM 4.12.219 exactly as proposed.

3. The agency has adopted New Rule I, ARM 4.12.223; New Rule II, ARM 4.12.221; New Rule III, ARM 4.12.222; New Rule IV, ARM 4.12.401; New Rule V, ARM 4.12.402; New Rule VI, ARM 4.12.403; New Rule VII, ARM 4.12.404; and New Rule VIII, ARM 4.12.405 exactly as proposed.

4. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

By: /s/ W. Ralph Peck
Ralph Peck, Director
Montana Department of Agriculture

/s/ Tim Meloy
Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State November 27, 2000.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 4.12.3001, 4.12.3003, 4.12.3007, 4.12.3401, amendment of ARM 4.12.3002, 4.12.3004, 4.12.3005, 4.12.3010 through 4.12.3013, 4.12.3402, 4.12.3403, and adoption of New Rules I through XVIII relating to seeds	)	NOTICE OF REPEAL, AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On October 26, 2000, the Department of Agriculture published notice of the proposed repeal of ARM 4.12.3001, 4.12.3003, 4.12.3007, and 4.12.3401, amendment of ARM 4.12.3002, 4.12.3004, 4.12.3005, 4.12.3010 through 4.12.3013, 4.12.3402, and 4.12.3403, and adoption of new rules I through XVIII relating to seeds at page 2740 of the 2000 Montana Administrative Register, Issue Number 20.

2. The agency has repealed ARM 4.12.3001, 4.12.3003, 4.12.3007, and 4.12.3401 as proposed.

3. The agency has amended ARM 4.12.3002, 4.12.3004, 4.12.3005, 4.12.3010 through 4.12.3013, 4.12.3402, and 4.12.3403 exactly as proposed.

4. The agency has adopted New Rule I, ARM 4.12.3009; New Rule II, ARM 4.12.3014; New Rule III, ARM 4.12.3015; New Rule IV, ARM 4.12.3016; New Rule V, ARM 4.12.3101; New Rule VI, ARM 4.12.3102; New Rule VII, ARM 4.12.3103; New Rule VIII, ARM 4.12.3104; New Rule IX, ARM 4.12.3105; New Rule X, ARM 4.12.3106; New Rule XI, ARM 4.12.3107; New Rule XII, ARM 4.12.3108; New Rule XIII, ARM 4.12.3109; New Rule XIV, ARM 4.12.3110; New Rule XV, ARM 4.12.3111; New Rule XVI, ARM 4.12.3112; New Rule XVII, ARM 4.12.3113; and New Rule XVIII, ARM 4.12.3114 exactly as proposed.

5. The department received one written comment. The comment received and the department's response is as follows:

COMMENT 1: The commenter supported the rules as proposed.

RESPONSE: The department concurs.

DEPARTMENT OF AGRICULTURE

By: /s/ W. Ralph Peck
Ralph Peck, Director
Montana Department of Agriculture

/s/ Tim Meloy
Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State November 27, 2000.

BEFORE THE STATE AUDITOR AND COMMISIONER OF SECURITIES
OF THE STATE OF MONTANA

In the matter of the adoption of Rule I [ARM 6.10.135] pertaining to Canadian broker-dealer registration)	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 26, 2000, the State Auditor and Commissioner of Securities published notice of the proposed adoption of new rule I pertaining to Canadian broker-dealer registration at page 2777 of the 2000 Montana Administrative Register, issue number 20.

2. The State Auditor has adopted new rule I (6.10.135), as proposed, but with the following changes (new text is underlined; text to be deleted is interlined):

RULE I [6.10.135] CANADIAN BROKER-DEALERS AND SALESPERSONS (1) and (2) will remain the same.

(3) Transactions by Canadian broker-dealers and their salespersons pursuant to (1) and (2) of this rule will be deemed not to involve the "offer" or "sale" of a security, as those terms are defined in 30-10-103, MCA, for purposes of compliance with ~~30-10-201~~ 30-10-202, MCA, and the rules promulgated thereunder. Nothing in this rule shall affect the duty of the Canadian broker-dealer and its agents to comply with 30-10-301, MCA, and the rules promulgated thereunder.

AUTH: Sec. 30-10-105, 30-10-107, MCA
IMP: Sec. 30-10-201, MCA

3. The Department has thoroughly considered all comments and testimony received. Those comments, and the Department's responses thereto, are as follows:

Comment 1: Charles Potuznik of Dorsey & Whitney, representing the Investment Dealers Association of Canada (IDA), the national self-regulatory organization for the Canadian securities industry, wrote an e-mail in general support of the proposed rule. Mr. Potuznik, however, stated that the rule fails to provide a parallel exemption for the underlying security involved in transactions contemplated by the proposed rule. Specifically, the proposed rule does not provide an exemption from the registration requirements of Montana Code Annotated, §30-10-202, which requires that a security offered and sold in Montana be registered unless an exemption exists or unless it is a federal covered security. To remedy, Mr. Potuznik suggested adding language to the rule exempting the underlying security.

Response: Mr. Putuznik's comment has prompted the Securities Department to recognize that allowances must be made for the underlying security for Canadian firms relying on this rule. Rather than providing an exemption for the security itself, the department will deem such transactions by Canadian broker-dealers and their salespersons not to involve an "offer" or "sale" of a security. The department has amended the proposed rule as shown above.

4. These rules will become effective December 8, 2000.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: /s/ Brenda K. Elias
Brenda K. Elias
Deputy Securities Commissioner

By: /s/ Janice S. VanRiper
Janice S. VanRiper
Rules Reviewer

Certified to the Secretary of State November 27, 2000.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules relating to content and performance standards for social studies, arts, library media, and workplace competencies	)	CORRECTED NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 5, 2000, the Board of Public Education (Board) published a notice at page 2685 of the 2000 Montana Administrative Register, Issue Number 19, of the adoption of the above-captioned rules which continues the process of replacing model learner goals with content and performance standards in accordance with the statutory duties of the Office of Public Instruction and the Board under sections 20-2-114, 20-2-121, 20-3-106 and 20-7-101, MCA, to define the basic instruction program for pupils in Montana's public schools.

2. The reason for the correction is that the notice of adoption incorrectly assigned rule numbers in sub-chapter 25 to the rules pertaining to arts content and performance standards. Rules pertaining to general provisions of content and performance standards are currently located in sub-chapter 25. The arts content and performance standards rules should be codified at sub-chapter 28 which is reserved for arts content and performance standards rules. The corrected assigned rule numbers are as follows:

Old	New	Old	New
10.54.2510	10.54.2810	10.54.2551	10.54.2851
10.54.2511	10.54.2811	10.54.2552	10.54.2852
10.54.2512	10.54.2812	10.54.2553	10.54.2853
10.54.2513	10.54.2813	10.54.2560	10.54.2860
10.54.2520	10.54.2820	10.54.2561	10.54.2861
10.54.2521	10.54.2821	10.54.2562	10.54.2862
10.54.2522	10.54.2822	10.54.2563	10.54.2863
10.54.2523	10.54.2823	10.54.2587	10.54.2887
10.54.2530	10.54.2830	10.54.2588	10.54.2888
10.54.2531	10.54.2831	10.54.2589	10.54.2889
10.54.2532	10.54.2832	10.54.2590	10.54.2890
10.54.2533	10.54.2833	10.54.2591	10.54.2891
10.54.2540	10.54.2840	10.54.2592	10.54.2892
10.54.2541	10.54.2841	10.54.2593	10.54.2893
10.54.2542	10.54.2842	10.54.2594	10.54.2894
10.54.2543	10.54.2843	10.54.2595	10.54.2895
10.54.2550	10.54.2850	10.54.2596	10.54.2896

Old	New
10.54.2597	10.54.2897
10.54.2598	10.54.2898

3. Replacement pages for the corrected notice of adoption will be submitted to the Secretary of State by December 31, 2000.

By: /s/ Kirk Miller
Kirk Miller, Chairperson
Board of Public Education

/s/ Geralyn Driscoll
Geralyn Driscoll, Rule Reviewer
Office of Public Instruction

Certified to the Secretary of State November 27, 2000.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption, transfer and amendment, amendment, and repeal of rules relating to standards of school accreditation	)	NOTICE OF ADOPTION, TRANSFER AND AMENDMENT, AMENDMENT, AND REPEAL OF RULES RELATING TO STANDARDS OF SCHOOL ACCREDITATION

TO: All Concerned Persons

1. On August 24, 2000, the Board of Public Education (the Board) published notice of the proposed adoption, transfer and amendment, amendment, and repeal of rules concerning standards of school accreditation, at page 2145 of the 2000 Montana Administrative Register, Issue Number 16.

2. After consideration of the comments received, the Board has adopted RULE II, ARM 10.55.715, exactly as proposed.

3. After consideration of the comments received, the Board has adopted RULE I, ARM 10.55.606, with the following changes, stricken matter interlined, new matter underlined:

RULE I, ARM 10.55.606 PERFORMANCE-BASED ACCREDITATION
(1) through (3)(a) remain the same as proposed.
(b) Host at least two visitations, chaired by a person trained or experienced in the process ~~and selected from an office of public instruction approved list,~~ to seek feedback and validate the school improvement process;
(c) Notify the superintendent of public instruction of the visitation dates and team members. A member of the staff of the office of public instruction shall be invited to be a member of the visitation team;
(d) through (4) remain the same as proposed.
(5) A school district, on behalf of one or more of its accredited schools electing this process, may petition the superintendent of public instruction to recommend that the board of public education waive existing standards that interfere with the school improvement plan, excluding standards stating a statutory requirement, ~~or~~ standards pertaining to teacher certification and content and performance standards as defined by the board of public education.

COMMENT 1: Jay Eslick, Superintendent of Chinook Public Schools and Commissioner of the Northwest Association of Schools and Colleges, opposes the proposed language of subsection (3)(b), (3)(c), and (4)(g). It should not be mandatory to use the Office of Public Instruction (OPI) staff on the visitation team and he is opposed to using the state content and performance standards as a basis for accreditation.

COMMENT 2: Elaine Meeks, Polson Public Schools, commented

that subsection (3)(c) will be difficult to implement and is unnecessary because subsection (3)(b) requires the chair of the visitation team be selected from an OPI-approved list. Also, subsection (5) should refer to the state content and performance standards to be consistent with ARM 10.55.604.

RESPONSE 1 and 2: The Board agrees that the OPI staff should not be mandatory members of the visitation team. The OPI shall be invited to participate, however, if the OPI chooses not to participate on a team, the visitation team can still perform its duties. Subsections (3)(b) and (c) have been changed.

The content and performance standards are an integral part of the state accreditation standards. As such they should be used as part of the basis for accreditation and should not be waived. Language has been added to reflect this.

COMMENT 3: Jack Copps, Seeley Lake, commented that there should be a higher level of accreditation for schools that have demonstrated a sustained school improvement effort, such as schools participating in performance-based accreditation.

RESPONSE 3: The Board disagrees. The purpose of accreditation standards is to guarantee students the benefits of attendance in accredited schools and provide a basis for transfer, not to award exemplary status.

4. After consideration of the comments received, the Board has amended and transferred the following rules as proposed:

OLD	NEW	
ARM 10.55.2001	10.55.908	School Facilities
ARM 10.55.2002	10.55.909	Student Records

5. After consideration of the comments received, the Board has amended the following rules as proposed: ARM 10.55.601, 10.55.604, 10.55.605, 10.55.701, 10.55.702, 10.55.706, 10.55.707, 10.55.709, 10.55.710, 10.55.712, 10.55.713, 10.55.801, 10.55.802, 10.55.805, 10.55.901, 10.55.907, 10.55.1001, 10.55.1002, and 10.55.1201.

10.55.601 ACCREDITATION STANDARDS: PROCEDURES

COMMENT 4: Jack Copps, Seeley Lake, commented that the use of the term "school district" instead of "school" in these rules creates ambiguity. It is unclear whether the state accreditation requirements are at the school or the school district level. Accreditation should be at the school level and the wording of all applicable rules should be changed to clearly state this.

Also, he supports the language of subsection (3)(c) that requires the OPI to monitor and evaluate comprehensive plans. Resources should be available to the OPI to satisfy this important responsibility.

RESPONSE 4: For systemic improvement, the Board believes a district-wide comprehensive education plan is necessary. The Board agrees with the comment that comprehensive plans should be monitored and evaluated by the OPI, and that resources should be made available to do this.

COMMENT 5: Eric Feaver, President of the Montana Education Association-Montana Federation of Teachers (MEA-MFT), commented on behalf of that organization. The MEA-MFT supports eliminating the deferral option.

COMMENT 6: Lance Melton, Executive Director of the Montana School Boards Association (MSBA), commented on behalf of that organization. The old language regarding deferrals amounted to allowing a district to "throw up its hands and state 'we can't meet this standard, so please excuse us for a definite period.'" The new variance from accreditation process (ARM 55.10.604) requires a district to establish it has found a better way of doing things than the way authorized by the accreditation rules. The MSBA accepts the reasoning for eliminating deferrals from the accreditation process, but wants districts to be clearly informed that a variance under ARM 55.10.604 is not a substitute for the old deferral process.

COMMENT 7: Niki Whearty, Montana Library Association, School Library Media Division, supports the elimination of the option of a notice of deferral, subsections (4)(a) through (f), and changes to the procedure for variance. The past practice of notice of deferral was detrimental to students. Many schools received deferrals related to library staffing. She offered as an example an exhibit showing 249 schools with deferrals or applications for alternative standards related to library staffing. Ending deferrals will provide for more uniform adherence statewide to accreditation standards and improve student access to library services and development of skills. Elizabeth Eden, Charlotte Henson, Margaret Kernan, Nathel Martin, Harriett Meloy, Gene Menicucci, Joan Meyer, Shelley Pelc and Susan Watne joined in this comment. Karen Strege, Montana State Library, and Joan Toole commented similarly.

RESPONSE 5 through 7: The Board agrees.

COMMENT 8: Tom Lockyer, East Helena Public Schools, supports the proposed changes to this rule. The district he represents strongly believes that the school improvement process is critical in the education of students. The changes in this rule directly address, reinforce and advance the efforts of school districts that are working to improve, such as pilot districts in the Montana Improving Schools Through Accreditation (MISTA) Program.

RESPONSE 8: The Board agrees.

COMMENT 9: Doug Reisig, Hellgate Elementary School,

opposes eliminating the notice of deferral provision. Deferral of state standards allows local school districts to continue to provide education opportunities for students within the economic and political confines of local interests. Ending deferrals will increase the local economic pressure on communities, taxpayers and school districts at a time when additional funding sources are disappearing. Without deferrals many districts will not meet accreditation standards. Deferrals are needed because the Legislature does not provide enough funding for districts to meet the state accreditation standards.

COMMENT 10: Elmer Myers, Missoula County Curriculum Consortium, opposes ending the deferral process, particularly for class size, foreign language, guidance and library staffing. There has not been ample consideration of the financial cost of meeting these requirements. Ending deferrals could result in many unaccredited districts because local taxpayers do not want to fund these requirements. Many of the districts he represents spend 85 to 90 percent of their general fund budget on salaries. There is little discretionary money to meet higher standards. If districts do not receive deferrals and are unaccredited, this information and test scores will be printed in newspapers, adding credibility to those who feel public schools are currently not doing the job. If the State is going to mandate higher expectations there should be additional funds attached. If the State does not provide additional funds, he suggests that expenses related to meeting accreditation standards be placed together in a permissive mill levy for districts to receive funds "without the hassle of a local mill levy."

COMMENT 11: Joel Voytoski, Evergreen School District No. 50, commented that although a district cannot expect to defer compliance with standards forever, there should be deferrals based on inadequate funding. He interprets the rule changes as allowing districts that no longer qualify for deferrals to now qualify for variances (see MSBA Comment No. 6). The old and new rules skirt the issue of funding. Any standard adopted by the State should be adequately funded.

RESPONSE 9 through 11: It is time to eliminate notices of deferrals. All students should receive services required by accreditation standards.

COMMENT 12: Joel Voytoski, Evergreen School District No. 50, opposes requiring five-year plans for school districts and schools, subsection (3). Planning sounds good to a bureaucrat but his district wants personnel to spend their limited time and resources working with students. Elmer Myers, Missoula County Curriculum Consortium, made a similar comment.

RESPONSE 12: Long-term planning is necessary in order for educators to provide effective instructional services to students. In addition, the plan will serve as an accountability tool.

COMMENT 13: Carol Juneau, Chairperson of the Montana-Wyoming Indian Education Association (MWIEA), commented that the following language should be added to subsection (3)(a)(i): "the profile data of schools should include the ethnicity of students as it relates to the academic progress, dropout rates and other significant benchmarks that can be used in planning programs for all students and to determine if our Constitutional language of educational equality is being achieved."

The following language should be added to subsection (3)(a)(vi): "For schools located on Montana's Indian Reservations, outline of how the school will coordinate their efforts with the Tribal Government/Tribal Education Departments."

RESPONSE 13: The profile data comments have been referred to the OPI with a recommendation to include in-state guidance.

The Board sees the value of the suggested language for subsection (3)(a)(vi), but it is more appropriate in ARM 10.55.603, which is currently being reviewed for possible changes.

10.55.604 VARIANCES TO STANDARDS

COMMENT 14: Lance Melton, MSBA, commented that MSBA supports the provision for a variance from standards, but wants districts to be informed that the new variance process is not a substitute for the old deferral process that is being eliminated. The deferral process simply excused noncompliance. The variance process will require a district to establish that it has a better way of doing things. Many districts are interpreting the proposed rule as a reworded version of deferrals (see, for example, Joel Voytoski Comment No. 11). Districts should be clearly advised of the fact that the deferral process is gone.

RESPONSE 14: The requirement that variances be "workable and educationally sound in comparison to the intent of the standard(s)" is sufficient to express that the new variance process is not a substitute for the notice of deferral process that was eliminated.

COMMENT 15: Eric Feaver, MEA-MFT, supports this rule for providing an outline of how school districts may design alternatives to certain standards and establish charter schools.

COMMENT 16: Carol Juneau, MWIEA, commented that the MWIEA strongly supports this rule because it provides for alternative educational opportunities to meet the goal of improved high school graduation rates. The dropout rate for American Indian students is a great concern of the MWIEA and it supports giving school districts flexibility to develop programs to address that problem. Mike Jetty, Board Member of MWIEA, offered a similar comment.

COMMENT 17: Niki Whearty, Montana Library Association, School Library Media Division, supports the new variance process. In the past, some districts sought alternative accreditation simply to avoid meeting the minimum accreditation standards. What was labeled "alternative" was, in fact, substandard. The new language stipulates that applications must meet specific criteria, including evidence that the district's goals meet or exceed the current standards. This should be carefully enforced. Elizabeth Eden, Charlotte Henson, Margaret Kernan, Nathel Martin, Harriett Meloy, Gene Menicucci, Joan Meyer, Shelley Pelc and Susan Watne joined in this comment.

COMMENT 18: Charlotte Henson, Helena, commented in support of the new language on variances if it is applied to require districts to meet the existing standards unless they can show that the proposed variance exceeds the minimum requirements.

RESPONSE 15 through 18: The Board agrees.

COMMENT 19: Elizabeth Eden, Helena, wants standards that districts cannot "write away" with language that implies intent, but never results in "equal or better" than the minimum accreditation rules. Time periods of 5 years for waivers allow for changes from the original intent. No one really assesses annually the status of the waiver and its effectiveness.

RESPONSE 19: The OPI has requested legislative funding as part of its School Improvement Initiative to do on-site accreditation visitations. This would provide in-depth, on-site review of how schools are meeting accreditation requirements. Currently the review is a paper one. The Board supports increased reviews.

COMMENT 20: Elmer Myers, Missoula County Curriculum Consortium, commented that the districts he represents interpret this rule to provide for charter schools. There does not appear to be a great deal of difference between the charter school and the regular school district.

RESPONSE 20: Subsection (2) does allow for a charter school. School district governance, open student access, compliance with health and safety laws, teacher qualifications, collective bargaining to the same extent as required or provided by state law, and public input are, however, required under the proposal. Charter schools have significant flexibility in instruction, staffing, coursework and class organization.

10.55.605 CATEGORIES OF ACCREDITATION

COMMENT 21: Lance Melton, MSBA, supports the concept of this rule, but wants the rule to clearly explain what constitutes a "minor" deviation, what constitutes a "serious" deviation, and how many violations constitute "numerous" violations. Whether a district receives regular accreditation,

accreditation with advice or deficiency accreditation depends on the definition of minor, serious and numerous. What constitutes minor, serious and numerous needs to be objectively defined in rule so that districts have an assurance that the accreditation determination will be made on a consistent, objective basis in each instance. The current language implies that the Board will treat some standards as "serious" and some as not serious. The current language requires districts to guess which violations are "serious" and how many violations are "numerous." If the Board does not provide a clear definition of what distinguishes the various categories of accreditation, the decision will be left to the OPI employees who administer the rules. Also, if a deficiency accreditation is the result of inadequate funding, that fact should be noted on the letter informing the district and/or the public of the deficiency.

The MSBA believes that a process should be implemented to allow districts to articulate and document the financial hardship of trying to meet state standards without adequate state funding. The MSBA proposes the following subsection (7) added to this rule:

> A school district that supervises and controls a school that does not meet the minimum requirements for regular accreditation shall be allowed, within 90 days of the date upon which it receives notice of its schools' accreditation status, to apply for a finding of financial necessity for the failure to meet regular accreditation. A district shall make application in such cases on forms developed by the Office of Public Instruction, and shall submit specific financial and educational documentation establishing the financial necessity, if any, for failure of the school in question to meet regular accreditation. The Board shall consider such application at the next scheduled meeting following the timely submission of such application. Based upon the information provided by the district, the Board will have, in its sole discretion, the authority to determine whether the district has met its burden for establishing a financial necessity for the failure of the school in question to meet regular accreditation. Should the Board determine that a financial necessity has been established by the district which has caused the school to fail to meet the minimum requirements for regular accreditation, the financial necessity shall be noted on the annual accreditation status letter. The Board's decision shall be a final decision and may not be appealed.

RESPONSE 21: Criteria for accreditation status is included in Appendix F to the Montana School Accreditation Standards and Procedures Manual. This is not included or referenced in administrative rules to allow flexibility for exceptional circumstances in individual schools. The OPI makes recommendations on accreditation status to the Board. The Board

reviews these recommendations and awards accreditation status. The Board will not change this process because it wants the criteria for accreditation status to be a guideline with opportunities for exceptions in unique circumstances. The Board makes the final accreditation status decision.

The Board believes that the proposed process for adding a determination that less than regular accreditation status is due to inadequate funding would take additional time and be difficult to determine without extensive administrative review, which would delay the final accreditation letter. The Board will not add this determination. The Board will, however, ask the OPI to add a section on the fall report for districts/schools to document that financial hardship is the reason they did not comply with a standard. If a school receives less than regular accreditation status, this locally determined financial hardship will be noted on the official letter reporting accreditation. The Board will ask the OPI to report on these financial needs on an annual basis.

COMMENT 22: Eric Feaver, MEA-MFT, supports the revision to the categories of accreditation, in particular the provisions that state a school seeking initial accreditation or reinstatement of accreditation must meet the requirements of regular accreditation. The MEA-MFT concurs with the comments of the MSBA regarding adequate state funding, but recommends further consideration before adopting subsection (7) proposed by the MSBA (see Comment No. 21).

RESPONSE 22: The Board agrees.

10.55.701 BOARD OF TRUSTEES

COMMENT 23: Nancy Zadick, President of the Montana Parent Teacher Association (PTA), commented in support of the addition of subsections (3)(m)(i) through (vi). On behalf of Montana parents of school-age children, the organization she represents strongly supports the addition of a parent involvement policy as an accreditation requirement. The purpose of a policy is to promote meaningful parent and family participation, to raise awareness regarding the components of effective programs and to provide guidelines for schools that wish to improve their programs. The Montana PTA supports the current new wording of the rule and would like the Board to consider establishing the National PTA Standards for Parent Involvement Programs as the baseline standard for district/parent involvement policies. Other parents across the State, including Michele Rispens, Advocacy Vice President for the Montana State PTA, Becky Agamenoni, Dawn Finney, Sheila Kelly, Tonya Marquart, Colleen Mercer, Dawn Milligan, Beth Morrison, Debby Plath and Kim Smith made similar comments.

COMMENT 24: Leigh Spencer, Montana PTA Leadership, commented in support of the addition of subsections (3)(m)(i) through (vi). Parent and family involvement increases student

achievement and success. Schools that support parent involvement have improved teacher morale and resulted in higher ratings of teachers by parents. Parent involvement is a win/win for everyone and is widely supported.

RESPONSE 23 and 24: The Board agrees that boards of trustees should adopt policies on parental involvement. The Board will request that the OPI distribute the National PTA Standards for Parent Involvement Programs to all school districts. The PTA Standards may help boards of trustees develop a local policy.

COMMENT 25: Carol Juneau, MWIEA, commented on behalf of the organization in support of subsection (3)(m) regarding a requirement that districts have a written policy that encourages and supports meaningful parental participation in schools. The MWIEA recommends that language be added requiring school districts to report whether a policy exists. For example, "All schools will indicate in their fall reports if a parent involvement policy is in place in their district."

RESPONSE 25: The Board will request that the OPI ask in its fall report if a parent involvement policy is in place within the district.

COMMENT 26: Leon Rattler, President of the Montana Association for Bilingual Education, commented in support of subsection (3)(n). The organization he represents supports the integration of Indian education into the general curriculum. This will enhance the academic success for all students and contribute to mutual respect and understanding of Indian and non-Indian students and communities. Carol Juneau, MWIEA, and Mike Jetty, MWIEA, joined in this comment.

RESPONSE 26: The Board agrees.

10.55.709 LIBRARY MEDIA SERVICES, K-12

COMMENT 27: Niki Whearty, Montana Library Association, School Library Media Division, supports the requirements for library media services. Elizabeth Eden, Charlotte Henson, Margaret Kernan, Nathan Martin, Harriett Meloy, Gene Menicucci, Joan Meyer, Shelley Pelc and Susan Watne joined in this comment.

COMMENT 28: Karen Strege, Montana State Library, commented that the success of school libraries in training students to use information resources and to develop a love of reading will determine the success of college and public libraries. The standards are critical to ensure that students learn to use resources necessary to enter the information-based workplace, participate in higher education and pursue life-long learning activities.

RESPONSE 27 and 28: The Board agrees.

COMMENT 29: Elmer Myers, Missoula County Curriculum Consortium, opposes requiring a district to employ curriculum coordinators, counselors or librarians based on student or staff ratios.

RESPONSE 29: The Board believes it is necessary to have student or staff ratios for employment of curriculum coordinators, counselors and librarians to ensure minimum services to all students in Montana's accredited schools. If a local school has a different way to meet the intent of the standards requiring these staff members, a variance for these standards can be submitted.

10.55.801 SCHOOL CLIMATE

COMMENT 30: Joel Voytoski, Evergreen School District No. 50, opposes removing the phrase "consider ways to" from the first sentence in the rule: "The Board of trustees shall ~~consider ways to~~:." This change has huge implications for districts across the State. It is an unfunded mandate to provide programs and services that meet the needs of at-risk students. His district cannot meet the needs of at-risk students without funding. Donna Maddux, Flathead County Superintendent of Schools, offered a similar comment.

RESPONSE 30: District boards of trustees need to take action, not just consider ways to ensure a positive school climate. The Board believes the proposed language change strengthens this rule.

10.55.907 DISTANCE LEARNING

COMMENT 31: Elmer Myers, Missoula County Curriculum Consortium, opposes the rule change. It has more requirements and outlines how local districts are to utilize and implement the distance learning programs, not allowing districts much choice. The rule implies local boards and administrators are not capable of implementing change or leading school districts. Accreditation rules should establish minimum requirements. There should be fewer restrictions.

RESPONSE 31: The Board disagrees with this assessment. The Board believes that the proposed language is necessary to clarify staff assignments, qualifications and reporting expectations of accredited schools when they use distance learning.

COMMENT 32: Eric Feaver, MEA-MFT, commented that the distance learning rules are undeveloped. Issues and problems in this area surface every day.

RESPONSE 32: The Board agrees that distance learning options are just beginning in local schools. The Board believes as the learning procedures and programs change, modification of

this rule may be necessary.

6. After consideration of the comments received, the Board has amended the following rules as proposed with those changes given below, stricken matter interlined, new matter underlined:

10.55.602 DEFINITIONS For the purpose of this chapter, the following terms apply:
(1) remains the same.
(2) "~~Building~~ School administrator" means a person who is part of the school's administrative or supervisory staff and who holds a class 3 certificate and is appropriately endorsed.
(3) through (9) remain the same as proposed.

COMMENT 33: Dori Nielson, Office of Public Instruction, commented that the rules throughout the accreditation standards should reference "school" administrators rather than "building" administrators.

RESPONSE 33: The Board agrees and has changed all references to "building" administrators in this rule and in ARM 10.55.703, 10.55.704 and 10.55.705, to "school" administrators.

COMMENT 34: Joel Voytoski, Evergreen School District No. 50, commented that the definition of "program area standards" should include an explanation of the difference between Vocational/Practical Arts and Vocational/Technical Education. He is concerned that certificate endorsement in both Vocational/Practical Arts and Vocational/Technical Education will be required. The term "world languages" should be defined and the rules should provide more detailed requirements of what endorsement a teacher must have to teach world languages.

RESPONSE 34: The Board agrees that a definition for world languages is necessary. A definition has been drafted by the OPI and will be reviewed by the Board in November 2000, for inclusion in the glossary section of the appendices to the Montana School Accreditation Standards and Procedures Manual.
Vocational/Technical Education is the updated term for Vocational/Practical Arts. There will be no changes in endorsement requirements due to this terminology change.

10.55.703 CERTIFICATION AND DUTIES OF ~~BUILDING LEVEL~~ SCHOOL ADMINISTRATOR: PRINCIPAL (1) The ~~building~~ school administrator shall:
(a) through (g) remain the same as proposed.

COMMENT: See Comment and Response 33.

10.55.704 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF DISTRICT SUPERINTENDENTS (1) remains the same as proposed.
(a) A full or part-time district superintendent and a full or half-time ~~building~~ school administrator as defined in ARM 10.55.705(1)(a) or (b) shall be employed for an independent

elementary district with fewer than 18 full-time equivalent (FTE) certified staff or the district shall utilize the services of the county superintendent to fulfill the duties of the district superintendent. One administrator may serve as both superintendent and part-time ~~building(s)~~ school administrator as defined in ARM 10.55.705(1)(a) or (b). A superintendent serving under this subsection shall devote full time to administration and supervision not to exceed a total assignment of 100 percent FTE;

(b) A full or part-time district superintendent and a full or half-time ~~building~~ school administrator shall be employed for a combined elementary-high school district or a county high school district with fewer than 30 FTE certified staff. A full or part-time district superintendent and a full or half-time ~~building~~ school administrator shall be employed for an independent elementary district with more than 18 but fewer than 30 FTE certified staff. One administrator may serve as both superintendent and part-time ~~building~~ school administrator as defined in ARM 10.55.705(1)(a) or (b). A superintendent serving under this subsection shall devote full time to administration and supervision not to exceed a total assignment of 100 percent FTE;

(c) and (2) remain the same as proposed.

COMMENT: See Comment and Response 33.

COMMENT 35: Elmer Myers, Missoula County Curriculum Consortium, opposes requiring districts to employ curriculum coordinators, counselors or librarians based on student or staff ratios.

RESPONSE 35: It is necessary to have student or staff ratios for employment of curriculum coordinators, counselors and librarians to ensure minimum services to all students in Montana's accredited schools. If a local school has a different way to meet the intent of the standards requiring these staff members, a variance for these standards can be submitted.

10.55.705 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF ~~BUILDING~~ SCHOOL ADMINISTRATORS (1) School districts shall employ appropriately endorsed ~~building~~ school administrators as follows:

(a) through (g) remain the same as proposed.

(2) In schools with more than one ~~building~~ school administrator, the first administrator shall be appropriately endorsed as principal. The additional administrators shall have administrative endorsement(s) at the appropriate level(s) and in the area(s) that accurately reflect their supervisory responsibilities. For example, a school may assign properly certified and endorsed curriculum coordinators to supervise the appropriate instructional programs.

(3) In schools with at least three FTE ~~building~~ school administrators who are administratively endorsed, release time of department coordinators or chairpersons may be counted toward

additional ~~building~~ school administration. Department coordinators or chairpersons counted toward ~~building~~ school administration may observe and supervise but shall not formally evaluate classroom instruction.

COMMENT: See Comment and Response 33.

10.55.708 TEACHING ASSIGNMENTS (1) through (1)(b) remain the same.

(c) clarifications of teaching assignments in grades 5 through 12 departmentalized settings are published in Appendix A of the "Montana School Accreditation Standards and Procedures Manual" adopted November 2000.

(2) and (3) remain the same as proposed.

COMMENT 36: Lance Melton, MSBA, supports this rule but notes that Appendix A of the Montana School Accreditation Standards and Procedures Manual is subject to the Montana Administrative Procedure Act (MAPA) and can only be changed in a process that satisfies the requirements of MAPA.

RESPONSE 36: The Board agrees and will make all future changes in Appendix A of the Montana School Accreditation Standards and Procedures Manual by a process that satisfies the requirements of MAPA.

COMMENT 37: Carol Juneau, MWIEA, commented that the maximum number of assigned student responsibility hours per week should be reduced from 28 to 27.

RESPONSE 37: The consequence on school budgets and staffing patterns of reducing assigned student responsibility is too great without more opportunity for public comment. The Board believes this suggestion needs further study and public input before the Board can decide whether to adopt a change in maximum student responsibility.

COMMENT 38: The Division of Career and Technical Education of the OPI is opposed to the language change to subsection (2) because it does not change the current rule. A teacher with an elementary endorsement may continue to teach in grades 6, 7 and 8. This jeopardizes middle school and high school vocational/technical programs. In light of the current teacher shortage in several vocational programs the quality of programs is at risk, therefore endorsement in the appropriate vocational program is essential. Linda Lentz made a similar comment.

RESPONSE 38: The Board will consider this issue through changes to Appendix A of Montana School Accreditation Standards and Procedures Manual.

10.55.714 PROFESSIONAL DEVELOPMENT (1) and (2) remain the same as proposed.

(3) ~~Other than school districts, providers of professional~~

~~development shall be so authorized by, and registered with, the office of public instruction.~~

~~(4) By October 15 of each school year,~~ ~~s~~School district trustees shall establish an advisory committee to evaluate the school district's current school year professional development plan and develop and recommend a plan for the subsequent school year.

(a) remains the same as proposed.

(b) ~~By April 15 of e~~Each school year, school district trustees shall adopt a professional development plan for the subsequent school year based on the recommendation of the advisory committee.

(c) through (g) remain the same as proposed.

(h) ~~By May 1 of each school year, the~~ ~~s~~School district trustees shall file their adopted professional development plan with the office of public instruction and make their plan available to employees and the public.

COMMENT 39: Eric Feaver, MEA-MFT, supports this rule because it articulates the purpose of and process for design and delivery of accredited professional development.

RESPONSE 39: The Board agrees.

COMMENT 40: Carol Juneau, MWIEA, commented that the professional development rule should reference American Indian studies and the requirements of 20-1-501 through 20-1-503, MCA.

RESPONSE 40: The Board supports professional development for educators to help implement Article X of the Montana Constitution, but does not support requiring it through this regulation. Professional development plans are adopted by local school district trustees based on the recommendation of the local advisory committee. Specific training is not state mandated.

COMMENT 41: Elmer Myers, Missoula County Curriculum Consortium, opposes state regulation of PIR days. For most districts, 2 PIR days are used for MEA days and 3 PIR days are used for parent-teacher conferences. The remaining 2 days are used at the beginning or end of the school year. The Legislature eliminated the requirement that districts submit PIR plans and calendars to the OPI.

COMMENT 42: Doug Reisig, Hellgate Elementary, opposes requiring school districts to adopt a professional development plan by May 1st that is available to the public and employees. The Legislature eliminated this requirement. The rule re-visits an issue that is merely bureaucratic and lacks any purpose other than paperwork. Districts will submit generic plans to satisfy a requirement that has little merit. The rule may penalize school districts that are involved in negotiations with "specific professional development professionals" when those negotiations extend into June or July.

RESPONSE 41 and 42: The Montana Legislature, at the request of the OPI, eliminated submission of this plan to the OPI, but did not eliminate development of the plan. Planning of professional development is necessary. This information should be available to the OPI, employees and the public to enhance communication and statewide planning. Specific dates for establishing an advisory committee, adopting a plan and having it on file have been eliminated to allow more flexibility at the local school district level.

COMMENT 43: Joel Voytoski, Evergreen School District No. 50, opposes this rule. The wording in subsection (3) is unclear. If the rule means a school district that brings in an individual providing professional development must be approved by the OPI, there should be a process for expedited approval. The wording of subsection (4)(d) is redundant with statute (20-4-304, MCA) and should be removed. If the goal is to help districts develop a quality professional development plan, control of the 2 PIR days in October should be returned to the districts. Subsection (4)(g) eliminates flexibility. A district will not be able to take advantage of professional development it becomes aware of after the plan is adopted.

RESPONSE 43: The Board agrees that providers of professional development do not need to be authorized by and registered with the OPI. The language in subsection (3) is eliminated.

10.55.803 LEARNER ACCESS (1) remains the same.
(2) In developing curricula in all program areas, the board of trustees shall ~~consider ways to~~:
(a) through (i) remain the same as proposed.

COMMENT 44: Carol Juneau, MWIEA, commented that the organization supports the language added to this rule regarding American Indians but believes the requirement should be mandatory, not a recommendation. The organization proposes the following language: "In developing curricula in all program areas, the board of trustees will review and approve their school's curriculum to ensure that . . ." Mike Jetty, MWIEA, and Leon Rattler, Montana Association for Bilingual Education, join in this comment.

RESPONSE 44: In developing curricula, boards of trustees need to take action, not just "consider ways to" provide learning experiences matched to students' interests, readiness, and learning styles. Language has been amended to delete "consider ways to."

COMMENT 45: Eric Feaver, MEA-MFT, supports the revisions to this rule.

RESPONSE 45: The Board agrees.

10.55.804 GIFTED AND TALENTED (1) Schools shall provide educational services to gifted and talented students that are commensurate to their needs, and foster a positive self-image.

(2) Each school shall comply with all federal and state laws and regulations addressing gifted education.

(3) Each school shall provide structured support and assistance to teachers in identifying and meeting diverse student needs, and shall provide a framework for considering a full range of alternatives for addressing student needs.

COMMENT 46: Vivian Taylor, President of Montana Association of Gifted and Talented Education (AGATE), commented in opposition to the proposed rule. The AGATE represents approximately 400 teachers, parents and school administrators who support the approximately 17,000 high-ability, high-potential students in Montana schools. The AGATE proposes substituting the proposed rule with the following:

> (1) Schools shall provide educational services to gifted and talented students which are commensurate to their needs and fosters a positive self image.
>
> (2) Each school shall comply with all federal and state laws and regulations addressing gifted education.
>
> (3) Each school shall provide structured support and assistance to regular education teachers in identifying and meeting diverse student needs, and shall provide framework for considering a full range of alternatives for addressing students needs.

The AGATE wants language that will build programs to identify and serve gifted students and provide guidance and accountability to school districts to meet the needs of those students. Sue Hanson, Joy Jordan, Sandi Olsen, Billie Reynolds, Cynthia Schule and Sheila P. Youngblood provided similar comments.

COMMENT 47: Beth Kennedy, a gifted education teacher from Missoula, commented in opposition to the rule change. A bell curve distribution establishes the same number of gifted students as special education students. The gifted students are not receiving their proportionate share of services.

COMMENT 48: Sandi Olsen, representing AGATE, commented that the organization would like districts to offer gifted and talented programs that conceptually mirror special education programs. The proposed rule reduces the standards school districts must meet to serve the gifted and talented student population. This is a mistake.

COMMENT 49: Gail Gray, commenting on behalf of the State Superintendent and the Office of Public Instruction, stated that the proposed change to this rule is too extreme. The State Superintendent and OPI support the AGATE's proposed language. Eric Feaver, MEA-MFT, joined in this comment.

COMMENT 50: Claudette Morton, former Executive Secretary to the Montana Board of Public Education, commented against the proposed change to this rule. Prior Boards supported stronger language regarding gifted and talented programs and resisted, through a lawsuit, legislative efforts to reduce the requirements. To adopt the proposed language would negate all that past work. Montana needs to address the needs of gifted and talented students and the Board should do so by adopting the language suggested by the AGATE. Smaller school districts oppose gifted and talented program requirements with the argument that it is too burdensome. The State can help those districts meet the requirements by providing a framework to work with teachers in this area.

RESPONSE 46 through 50: The Board agrees with the comments and has adopted new language similar to that proposed by the AGATE.

10.55.902 BASIC EDUCATION PROGRAM: MIDDLE GRADES

(1) through (3)(c)(iii) remain the same as proposed.

(iv) social studies;

(v) health enhancement.

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

~~(ii) health enhancement;~~

(iii) through (v) remain the same as proposed, but are renumbered (ii) through (iv).

(e) through (4) remain the same as proposed.

COMMENT 51: Maureen Thomas, Association for Health, PE, Recreation and Dance, commented that the Association generally supports the new accreditation standards, but disagrees with the change in this rule that would no longer require health enhancement yearly for middle schools. This change is in contradiction to actions by the Surgeon General making daily physical education a national priority and Montana's Department of Public Health and Human Services which calls for daily exercise. Structured daily health enhancement classes allow students to relieve stress in a productive meaningful way.

Approximately 10 members of the Association attended the hearing and joined in this comment. Gail Gray, OPI; Eric Feaver, MEA-MFT; Jima Severson and Linda Lentz made similar comments.

RESPONSE 51: The Board agrees and has amended the proposed language of subsection (3) to add health enhancement to the program areas that are required of all students yearly.

COMMENT 52: Pat Wyss, Montana Association of Language Teachers (MALT), commented that the MALT supports sequential, articulated world language programs that begin as early as possible. Some districts offer foreign language exploratory classes. The MALT does not oppose these classes but they should not replace sequential programs focusing on one language. The MALT would like a clarification of the wording "in balance."

RESPONSE 52: Maintaining in balance means that over the course of the middle school years, all students shall experience a developmental, sequential curriculum in the visual arts, music, vocational technical education and world languages.

10.55.904 BASIC EDUCATION PROGRAM OFFERINGS: HIGH SCHOOL

(1) through (2)(d) remain the same as proposed.

(e) 2 units of vocational/technical education~~/computer education~~;

(f) through (i) remain the same as proposed.

COMMENT 53: Eric Feaver, MEA-MFT, commented that the term "computer education" is misleading and the rule should use the term "computer science" instead. Teachers of computer science must hold the appropriate endorsement to teach computer science. Computer science should not be viewed as an unwelcome competitor of vocational education. Computers are classroom tools that should be utilized across grade level and curriculum.

COMMENT 54: Bill Jimmerson and Mark Branger, Montana Association of Career & Technical Education, object to adding the phrase "computer education" to ARM 10.55.904(2)(e) and 10.55.905(2)(g). Current rules require a district to offer two units of vocational/practical arts and require a student to take one unit of vocational/practical arts/technical education. Computer programming is not vocational education and should not qualify for a district's or a student's vocational education unit. If the phrase "computer education" is added to the rule a class in computer programming could satisfy the district's and the student's requirements. Vocational educators include computer education in the curriculum, but computer education should not be singled out as a stand-alone class. All students should be required to take vocational/technical classes and a computer education class should not be accepted as a substitute.

COMMENT 55: Linda Lents is opposed to adding the phrase "computer education" to ARM 10.55.904(2)(e) and 10.55.905(2)(g). Students could opt out of family and consumer education classes by taking computer classes. Computers are not bad, but other subjects are equally good. If districts eliminate the other subjects or there is too much competition from computer classes the vocational education/practical arts subjects will suffer.

COMMENT 56: The Division of Career and Technical Education of the Office of Public Instruction is opposed to adding the phrase "computer education" to ARM 10.55.904(2)(e) and 10.55.905(2)(g). Vocational/technical education integrates computer skills into program areas. If computer education is allowed to compete with existing vocational programs as a stand-alone course, students may choose not to take other vocational classes offered to teach about adult roles and responsibilities.

COMMENT 57: Cheryl Schlepp, Past President of the Montana Association for Career and Technical Education, objects to

adding the phrase "computer education" to ARM 10.55.904(2)(e) and 10.55.905(2)(g). This change negates the implied and stated value of vocational/technical education. Computers are taught in vocational/technical education classes in all curriculum areas. The proposed change would allow "computer" classes, which are not a part of the vocation curriculum. All students should gain vocation/technical skills, which are not part of all computer classes outside the vocation curriculum.

RESPONSE 53 through 57: Career and technical education provides students with the opportunity to obtain technical skill training and leadership skills for the workforce. Computer education courses, that are part of a sequence of courses that provide individuals with the academic and technical knowledge and skills to prepare for further education and for careers, include competency-based applied learning, develop positive work attitudes and general employability and leadership skills, and produce measurable technical and occupation-specific skills should be counted under career technical education. The term "computer education" will be deleted from the proposed language in ARM 10.55.904 and 10.55.905.

10.55.905 GRADUATION REQUIREMENTS (1) through (2)(f) remain the same as proposed.

(g) 1 unit of vocational/technical education~~/computer education~~.

(3) and (4) remain the same as proposed.

COMMENT: See Comments and Response 53 through 57.

10.55.906 HIGH SCHOOL CREDIT (1) through (3) remain the same as proposed.

(4) With the permission of the school district trustees, a student may be given credit for a course satisfactorily completed in a period of time shorter or longer than normally required and, provided that the course meets the district's curriculum and assessment requirements, which are aligned with the content and performance standards stated in the education program. Examples of possible acceptable course work include ~~accredited~~ correspondence and extension courses, distance learning courses, adult education, summer school, work study, specially designed courses and challenges to current courses. Any acceptable program must be consistent with local board policy.

(a) remains the same as proposed.

COMMENT 58: Carol Juneau, MWIEA, commented that students should be allowed to challenge a foreign language class with an alternative language and receive credit.

RESPONSE 58: High schools have this option under the existing rule.

COMMENT 59: Jay Eslick, Superintendent of Chinook Public

Schools, suggested that the term "correspondence courses" be changed to "distance learning courses."

RESPONSE 59: The Board has added "distance learning courses" to this section and deleted the word "accredited" with correspondence courses. The definition of distance learning in subsection (1) states that it is technology-assisted instruction. The Board did not want to eliminate traditional correspondence courses from examples of acceptable course work listed in this subsection.

7. The Board has repealed ARM 10.55.903 and 10.55.2003 as proposed.

8. Fifty-eight people commented on these rules, either as individuals or on behalf of an organization. Most comments in opposition were directed at a specific rule. Many individuals noted that they opposed a particular change but generally supported the proposed rules. Of the 58 who commented, 11 identified themselves as proponents of the rules generally and 2 identified themselves as opponents of the rules generally. Below are general comments received that do not refer to a specific rule and do not require a response.

OPPONENTS

COMMENT 60: Elmer Myers, Missoula County Curriculum Consortium, generally opposes the proposed rule changes. The changes represent higher state expectations and more control by the OPI. Local control and local decision making is diminished. The fiscal costs associated with the rules have not been amply considered. These rules could result in many unaccredited districts that fail the local taxpayers. Many of the districts he represents spend 85 to 90 percent of the general fund budget on salaries so there is little discretionary money to meet higher standards. Librarians, counselors and curriculum coordinators have influenced the proposed rules.

PROPONENTS

COMMENT 61: Lance Melton, MSBA, commented that his organization generally supports the proposed changes to the accreditation standards. The changes are the result of the work of an accreditation task force, representative of a broad cross-section of Montana citizens interested in public education. The MSBA commends the Board and the OPI for encouraging participation by individuals and organizations interested in the revision of accreditation standards.

COMMENT 62: Mike Jetty, MWIEA, commented that MWIEA generally supports the changes. It is pleased that the standards encourage all Montana students to learn about the distinct and unique heritage of American Indians. Carol Juneau, MWIEA, made similar comments.

COMMENT 63: Eric Feaver, MEA-MFT, commented that the MEA-MFT generally supports the proposed changes, which represent a significant improvement over current rules.

COMMENT 64: Maureen Thomas, Association for Health, PE, Recreation and Dance, commented that she represents approximately 900 K-12 health enhancement teachers. The association generally supports the new accreditation standards. The Task Force did a good job in its work.

/s/ Kirk Miller
KIRK MILLER, Chairperson
Montana Board of Public Education

/s/ Geralyn Driscoll
Geralyn Driscoll
Rule Reviewer
Office of Public Instruction

Certified to the Secretary of State November 27, 2000.

BEFORE THE BOARD OF PUBLIC EDUCATION
STATE OF MONTANA

In the matter of the amendment of ARM 10.59.103 pertaining to the contents of the contract between the Board of Public Education and the Montana School for the Deaf and Blind Foundation	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 5, 2000, the Board of Public Education (BPE) published notice of the proposed amendment of the above-referenced rule at page 2568, 2000 Montana Administrative Register, issue number 19.

2. The Board has amended ARM 10.59.103 as proposed.

3. A public hearing was held on November 9, 2000 as published in the notice. No persons appeared at the hearing to provide comments. Written comments on the proposed amendment were received from the Montana School for the Deaf and Blind Foundation (Foundation). The BPE's responses to the comments from the Foundation are as follows:

COMMENT 1: The Foundation recommended that the proposed amendment provide that the BPE member and the Superintendent for the School for the Deaf and Blind appointed to the Foundation's Board of Directors be designated as non-voting directors.

RESPONSE: The BPE has decided not to accept this recommendation because it believes it is important to retain one BPE member and the Superintendent as voting members because of the BPE's statutory duty in Mont. Code. Ann. § 20-8-111 to receive and manage gifts made to the Montana School for the Deaf and Blind. The BPE also does not believe that having a BPE member or the Superintendent as voting directors of the Foundation's Board will affect the independence of the Foundation as a non-profit entity that is separate and distinct from the BPE. The BPE believes that by repealing the BPE's authority to appoint the voting majority of the Foundation's directors and by repealing the BPE's authority to increase or decrease the number of Foundation directors, the Foundation can establish itself through its Articles of Incorporation and By-laws as an entity structurally independent of the BPE.

COMMENT 2: The Foundation suggested that the proposed amendment contain a provision that the directors of the Foundation will be selected by the Foundation board.

RESPONSE: The BPE agrees that the directors of the Foundation must be selected by the Foundation as enunciated in the Foundation's restated or amended Articles of Incorporation. The BPE believes that by repealing the provision requiring Foundation directors to be appointed by the BPE, the BPE has left the Foundation with the discretion and independence to decide the manner and procedure for appointment of its own directors.

/s/ Kirk Miller
Kirk Miller, Chairman
Board of Public Education

/s/ Wayne Buchanan
Wayne Buchanan
Rule Reviewer

Certified to the Secretary of State November 27, 2000.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of a NEW RULE I pertaining to minimum federal requirements for the use of credible evidence to establish noncompliance in an enforcement action	)	NOTICE OF ADOPTION (AIR QUALITY)

TO: All Concerned Persons

1. In a Notice of Public Hearing on Proposed Adoption and Amendment dated January 31, 2000, and published at page 250 of the 2000 Montana Administrative Register, Issue No. 3, the Board of Environmental Review considered two alternatives addressing this issue, one prepared by the Department of Environmental Quality (ALTERNATIVE I), and the other by a working group composed of various owners and operators of affected facilities which would be subject to the rule (ALTERNATIVE II). The Board held a hearing on March 16, 2000, and received written comments through March 29, 2000. A transcript of the hearing was taken and it is included in the Board file on this matter.

2. On May 25, 2000, the Board published a supplemental notice, which proposed five new alternatives for consideration. The supplemental notice was published at page 1289 of the 2000 Montana Administrative Register, Issue No. 10.

On June 28, 2000, the Board conducted a public hearing in Helena for the purpose of receiving public comment on the proposed supplemental alternatives. A transcript of the hearing was taken and it is included in the Board file on this matter. Substantial public comment was received in the form of written comments and documentation submitted prior to, during and after the public hearing, as well as oral comments submitted during the comment period.

3. On November 22, 2000, the Board published a supplemental notice of proposed adoption and amendment to correct the citation of authority for the new rule alternatives listed in the two previous notices. The supplemental notice was published at page 3195 of the 2000 Montana Administrative Register, Issue No. 22.

4. After consideration of the comments received, the Board has adopted Alternative IIA, as proposed in the supplemental notice, with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

<u>17.8.132 CREDIBLE EVIDENCE</u> (1) For the purpose of submitting a compliance certification required pursuant to this chapter, or establishing whether or not a person has

violated or is in violation of any standard or limitation adopted pursuant to this chapter~~,~~ or Title 75, chapter 2, MCA, nothing in these rules shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with such standard or limitation if the appropriate performance or compliance test procedures or methods had been performed. However, when compliance or non-compliance is demonstrated by a test or procedure provided by permit or other applicable requirement, the owner or operator shall then be presumed to be in compliance or non-compliance unless that presumption is overcome by other relevant credible evidence.

AUTH: 75-2-111, 75-2-201, 75-2-203, 75-2-217, MCA
IMP: 75-2-203, 75-2-217, MCA

5. The Board has received the following comments; board responses follow:

COMMENT #1: For various reasons, several commenters opposed the adoption of any presumption, and supported Alternative I. These commenters contended that such a presumption could be interpreted as an impermissible enlargement of the time a source may be deemed in compliance, and could hinder enforcement flexibility and inappropriately subject a source to lengthy violation periods. The presumption such as that adopted by the Board would allow sources to have a favorable presumption even though their last reference test was several years in the past. An unconditional, continuing presumption is inappropriate, as some source emissions are so variable that a source test may not represent the emissions outside of the period of the test itself. Several commenters expressed the concern that a presumption would jeopardize continuous compliance, and would lead to increased emissions with an adverse effect on the right to a clean and healthful environment. Only those sources that are in violation of the laws are concerned about Alternative I.

RESPONSE: The presumption would not limit the admissibility of other relevant credible evidence, but would give added weight to approved reference methods or procedures. When compliance is demonstrated by a test or procedure provided by permit or other applicable requirement, then the owner or operator would be presumed to be in compliance unless that presumption is overcome by a preponderance of other, relevant credible evidence. If the test or other procedure upon which the presumption is based is dated, or is limited in its ability to predict compliance outside of the period of the test or procedure, this is also relevant credible evidence that is appropriate for consideration in overcoming the presumption.

The objective of this rebuttable presumption is to strike a balance by providing owners and operators with reasonable assurance of the standard they must meet to show or certify compliance, while also allowing the Department to consider all

relevant credible evidence in determining compliance. Although the Board recognizes that Alternative I uses the compliance test method or procedure as a reference point, the Board concludes that Alternative I does not give enough weight to the test or procedure.

Under the adopted rule, the presumption is reciprocal, and applies to demonstrations of compliance as well as noncompliance. This is appropriate since the underlying premise for that presumption is the reliability of the appropriate test or procedure as a measure of compliance status in general.

The initial burden of demonstrating compliance remains with the source. The rebuttable presumption of compliance arises only if an owner or operator meets its initial burden through reference tests or procedures required by its permit or other applicable requirements. The rule before the Board for adoption only addresses an evidentiary issue, and in all cases, the obligation to maintain compliance under federal and state laws governing air quality remains continuous. Thus, the adopted rule would not lead to increased emissions or an adverse effect on public health or the environment.

During these proceedings the Department assured the Board that it would not alter the practice of using the reference test or procedure as a "benchmark" or "yardstick" for measuring other credible evidence. However, parties should not have to rely on informal agency practice to avoid legal jeopardy. The informal practice of the Department of relying on the reference test method as the preferred means of demonstrating compliance might erode or be abandoned over time. Additionally, the Environmental Protection Agency or third parties may not follow this informal practice. The issue is not whether sources that are in compliance should or should not support Alternative I. Absent the inclusion of a presumption, the credible evidence rule would leave owners and operators who demonstrate or verify compliance based upon the approved reference tests at risk. There is no reason not to place such a "benchmark" explicitly in the rule, and the inclusion of a clear presumption promotes regulatory certainty and compliance.

COMMENT #2: Several commenters stated that if any type of presumption was appropriate, it should be the statutory presumption found in § 26-1-602(32), MCA, as proposed in Alternative III in the supplemental notice. Under Alternative III, the presumption of either compliance or noncompliance would be invoked only after the production of evidence to support it, and the initial burden of proof would be on the proponent of the presumption. The presumption is established only after a fact-specific showing has been made that the presumption is appropriate. As a statutory presumption already ingrained in Montana law, the courts and agencies would be accustomed to its application. This procedure is best suited to obtain objective compliance determinations, since the

information necessary to establish or rebut a presumption is generally within a source's exclusive control.

RESPONSE: The Board does not believe that all compliance evidence should have equal weight, and approved or required reference tests and procedures deserve more consideration. Alternative III is not useful because it incorporates a dated and obscure legal maxim that would not give a clear indication that a source passing a reference test or procedure would have a presumption of compliance after the test or procedure. It could be interpreted to require an earlier demonstration test in addition to the reference test or procedure.

The Board does not agree that the possible misapplication of the presumption outweighs the need to give appropriate weight to the test or procedure. Similarly, the Board does not believe that the availability of information to establish or rebut the presumption should be a guiding principle in determining whether the presumption is appropriate. Certainly, and at least in a litigation setting, all parties will have access to the same information through discovery.

For these reasons the Board rejects proposed Alternative III.

COMMENT #3: Several commenters stated that any rebuttable presumption created by the new rule should only be overcome by other credible evidence that is clear and convincing, as opposed to the lower standard of a preponderance. Given the substantial time and resources devoted to compliance tests and procedures, it is fitting that the evidence necessary to refute such tests and procedures be set at the higher threshold. Continuous emission monitors and compliance assurance monitoring will increase the data available to challenge the compliance status of a facility, so it is reasonable to give a facility more assurance regarding its status by requiring clear and convincing evidence to overcome the presumption.

RESPONSE: As previously noted, the Board is concerned that owners and operators of sources be provided with reasonable assurance of the standard they must meet to show or certify compliance. The Board recognizes that substantial time and resources are devoted to both development of the compliance tests and procedures as well as use of the tests and procedures. The objective behind adoption of a rebuttable presumption is to strike a reasonable balance between these considerations and the legitimate concern that all relevant credible evidence be considered in determining compliance. In the Board's judgment, to adopt the presumption and then further require clear and convincing evidence to overcome it is to give too little consideration to the latter concern. "Clear and convincing" means the rebuttal evidence must be "highly probable or reasonably certain." "Preponderance" means the evidence must be "worthy of persuasion." The use of a clear and convincing standard is too high a standard, and is

inconsistent with the notion that all credible evidence should be considered. In addition, the Board is concerned that requiring a clear and convincing standard may have the effect of raising the standard of proof in civil enforcement actions brought by the Department.

For these reasons, the Board rejects proposed Alternative IIB, and under the adopted rule provides the rebuttable presumption may be overcome by a preponderance of other credible evidence.

COMMENT #4: Two commenters were concerned that the proposed language of Alternative IIA appeared to be limited to only air quality regulations, and did not expressly apply to all standards and limitations, including those established in permits and as part of the State Implementation Plan (SIP).

RESPONSE: The Board agrees with this concern. The language in Alternative IIA has been amended to expressly state that it also applies to the determination of compliance under standards or limitations adopted pursuant to the Clean Air Act of Montana, Title 75, chapter 2, MCA, in addition to the requirements of ARM Title 17, chapter 8. This clarifies that the adopted rule extends to all standards and limitations, including those established in permits and as part of the SIP.

COMMENT #5: All commenters that addressed Alternative IV were opposed to its adoption. Several commenters indicated that there is too much uncertainty regarding its interpretation. Other commenters suggested that it does not go far enough in addressing issues such as the weight to be given to the results of compliance tests or procedures.

RESPONSE: The Board agrees with these comments, and has not adopted Alternative IV.

COMMENT #6: All commenters that addressed Alternative V were opposed to its adoption. This Alternative would severely restrict enforcement, since if a test showed noncompliance, it prohibits the use of credible evidence and the Department could not proceed with an enforcement action unless a subsequent test also showed noncompliance. This Alternative negates any incentive to maintain compliance. It would possibly allow a third party to force additional compliance tests or procedures, which can be very expensive.

RESPONSE: The Board agrees with these comments, and has not adopted Alternative V.

COMMENT #7: Several commenters noted that the proposed amendments to ARM 17.8.321(15) are unnecessary if the Board adopts a presumption such as that proposed in Alternative IIA. As currently written, ARM 17.8.321(15) recognizes that the continuous opacity monitoring system (COMS) is the primary measure of compliance. Under proposed Alternative IIA the

results from the COMS would be entitled to a rebuttable presumption. According to these commenters, the proposed amendments were necessary only if the Board were to adopt proposed Alternative I.

RESPONSE: The Board agrees with these comments, and notes that the proposed amendments to ARM 17.8.321(15) were only proposed as part of Alternative I.

COMMENT #8: One commenter noted that the presumption contained in the last sentence of proposed Alternative IIA is too broad, and that it should be limited to evidence obtained from a properly conducted EPA reference method test (those contained in 40 CFR Part 60, Appendix A).

RESPONSE: The Board sees no logical distinction between those compliance test methods contained in 40 CFR Part 60, Appendix A, and those developed through the permitting or SIP process. Therefore, the Board rejects this comment.

COMMENT #9: One commenter suggested that the Board strike the language "relevant to whether a source would have been in compliance with such standard or limitation if the appropriate performance or compliance test procedures or methods had been performed." According to this commenter, this language is ambiguous and will unduly burden enforcement. Both the Department and the Missoula City-County Health Department currently have the ability to use any relevant credible evidence to prove a violation. Further, since the rule will apply to all regulated sources, not just stationary sources, it is unclear whether sources without an established reference test are affected by the rule.

RESPONSE: The Board declines to strike this language. Specifically, the Board believes that the reference test method must be a key consideration in any determination regarding the admissibility of alternative data. Maintaining the focus of the compliance determination on whether or not the appropriate reference test would have shown a violation prevents the use of alternative data in a manner which may have the effect of increasing the stringency of the underlying standards. In certain cases this may have the effect of narrowing enforcement authority. However, the Board finds such a limitation to be appropriate and still protective of public health and the environment, since the integrity of the standards is still maintained.

The adopted rule expressly addresses itself to possible violations of any standard or limitation, and allows for the exclusive use of credible evidence. If there is no established test method or procedure, the Board believes the rule is still applicable, but the rule provides no comparative reference point against which to evaluate admissibility.

COMMENT #10: One commenter stated that if the Board adopts a credible evidence rule containing a presumption, then the Department would not have the same enforcement authority as citizens using the federal rules adopted under the federal Clean Air Act. Another commenter noted that any credible evidence rule that contains a presumption would hinder the ability to prove violations of the laws between reference tests. Other commenters argued that any rule containing a presumption would restrict the access of citizens to emission data, restricting their rights to sue for compliance.

RESPONSE: The Board does not believe that the federal credible evidence rule addresses the weight to be given evidence, only its admissibility. The presumption contained in the adopted rule addresses the weight to be given to a compliance test or procedure, relative to other credible evidence. It does not limit admissibility and thus would not limit the ability to enforce the laws between reference tests based on the existence of credible evidence, whether the action is brought by citizens or the government. The rule does not address access to emissions data.

COMMENT #11: One commenter stated that reference tests are "beauty contests," because the source controls the testing and has time to prepare for the test well in advance.

RESPONSE: The Board disagrees, and believes that the appropriate test or procedure provides a reliable measure of compliance status. Generally, these tests are scientifically developed, and are improved over the years. Some of these tests have been in development and use for 30 years. The Board believes the adopted rule provides the appropriate balance between the science, reliability and established nature of compliance tests and the evolving ability to use other credible evidence to determine compliance.

COMMENT #12: One commenter noted that the compliance assurance monitoring (CAM) rules and the credible evidence rule are interdependent. While the federal CAM rules are industry-friendly, the federal credible evidence rule is not, and the Board should seek to maintain this balance.

RESPONSE: The Board notes that the CAM rules and the credible evidence rule have been considered and addressed in separate rule proceedings. The CAM rules have been adopted and are not part of this proceeding. The contention that the CAM rules are "industry-friendly," and that this point alone should somehow provide the Board with a basis for decision making in this proceeding is rejected as vague and not supportive of reasoned analysis.

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State November 27, 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 AMENDMENT, REPEAL AND ADOPTION (SUBDIVISIONS)

TO: All Concerned Persons

1. On July 27, 2000, the Department published a notice of the proposed amendment, repeal, and adoption of the above-stated rules at page 1832, 2000 Montana Administrative Register, issue number 14. A public hearing was held on August 16, 2000.

2. The Department has amended ARM 17.36.305 as proposed.

3. The Department has repealed ARM 17.36.304 as proposed.

4. The Department has amended ARM 17.36.101 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

<u>17.36.101 DEFINITIONS</u>

(1) through (23) same as proposed.

(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~~ <u>structures</u>. 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~~ <u>structures</u>. 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.

(26) through (34) same as proposed.

(35) "Seasonally high groundwater" means the depth from the <u>natural</u> 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) same as proposed.

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

(38) through (44) same as proposed.

(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) through (51) same as proposed.

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

5. The Department has adopted new rules II (ARM 17.36.321), III (ARM 17.36.322), V (ARM 17.36.324), VI (ARM 17.36.325), and IX (ARM 17.36.345) as proposed.

6. The Department has adopted new rules I (ARM 17.36.320), IV (ARM 17.36.323), VII (ARM 17.36.326), and VIII (ARM 17.36.327) as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I (ARM 17.36.320) SEWAGE SYSTEMS: DESIGN (1) same as proposed.

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

(3) same as proposed.

TABLE 2
ALLOWABLE SYSTEMS, REQUIREMENTS

	Must be Designed by a Professional Engineer		Does not Need to 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		Does not Need to be Designed by a Professional Engineer	
DEQ-4 System	Public: $>$ 5000 gpd (1)	Public or Multiple-user: $\geq$ 2500 gpd and $\leq$ 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 IV (ARM 17.36.323) SEWAGE SYSTEMS: HORIZONTAL SETBACKS; WAIVERS (1) through (4) same as proposed.

TABLE 3
SETBACK DISTANCES

	Water Supply Wells	Sealed Components (1) and Other Components (2)	Drainfield/ Sand Mounds
Public or Multi-user Wells/Springs	-	100	100
Other Wells	-	50	100
Suction lines	-	50	100
Cisterns	-	25	50
Roadcuts, Escarpment	-	10 (3)	25
Slopes > 25% ~~(3)~~(4)	-	10 (3)	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 (5)	50	100
Floodplains	10	- (1) 100 (2)	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) Sewer lines and sewer mains may be located in roadways and on steep slopes if the lines and mains are safeguarded against damage.
~~(3)~~(4) Down-gradient of the sealed component, other component, or drainfield/sand mound.
(5) A waiver of this requirement may be granted by the department pursuant to ARM 17.36.601.

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

RULE VII (ARM 17.36.326) 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 and shall submit an operation and maintenance manual acceptable to the department.

(2) through (4) same as proposed.

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

RULE VIII (ARM 17.36.327) SEWAGE SYSTEMS: EXISTING SYSTEMS (1) same as proposed.

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

(3) and (4) same as proposed.

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

7. The following comments were received, and appear with the Department's responses:

ARM 17.36.101 Definitions

COMMENT #1: The rules should define "contour map" and should call for maps of greater detail.

RESPONSE: The Department has not defined "contour map" or specified the size of maps for subdivision applications because the type and size of map can vary depending on the proposed subdivision. The Department can ask for more detail during the review process if maps submitted are not adequate.

COMMENT #2: Several commentors were concerned that the definition of "bedrock" was not based on geology, and that gravels and other materials would be considered bedrock.

RESPONSE: The Department has defined bedrock in terms of a limiting layer for proper disposal of wastewater and not in terms of a geological definition. Gravel would not necessarily meet this definition, but if it did it would be considered a limiting layer in terms of adequate treatment of wastewater.

COMMENT #3: It is not clear whether the definition of "individual sewage system" includes systems with two connections or two-user systems.

RESPONSE: The definition of "individual sewage system" does include systems with two connections and two users. The scope of this definition overlaps with the new definition of "shared sewage system" in ARM 17.36.101(37). The definition of "individual sewage system" should be changed to allow dual-user systems to be covered under the new term. However, such a change is outside the scope of the notice of proposed rulemaking in this matter, and will need to be deferred to a later rulemaking.

<u>COMMENT #4</u>: The existing definition of "municipal" appears to have been omitted.

<u>RESPONSE</u>: The definition of "municipal" was not omitted. The definitions were renumbered in a recent rulemaking and "municipal" is now defined in ARM 17.36.101(17).

<u>COMMENT #5</u>: The definitions of "multi-user" water and sewer systems are not the same in the Circular and the rules. The rule uses the term "commercial facility" and the Circular uses "commercial structure". Another commentor suggested that the definition of "multi-user" should refer to "three or more living units with a population served not to exceed twenty-four". This commentor also stated that the reference to three commercial facilities might be misleading since a multi-user or even a public system can exist with only one or two commercial facilities.

<u>RESPONSE</u>: The Department has substituted "commercial structures" for "commercial facilities" in the rule definition, in order to conform to the Circular. The suggested inclusion of "three to four living units with a population served not to exceed twenty-four" is not necessary because that limitation is already inherent in the term "non-public". The reference to 3 through 14 commercial structures is necessary to clarify how the Department will address commercial structures that do not utilize public water or sewer systems.

<u>COMMENT #6</u>: In the definition of "seasonally high groundwater", the term "ground surface" should be "natural ground surface".

<u>RESPONSE</u>: The Department has modified the definition accordingly.

<u>COMMENT #7</u>: The definition of "subsurface sewage treatment system" should be clarified. The definition refers to open-jointed pipe, which is not allowed in the systems addressed in the Circular.

<u>RESPONSE</u>: The Department has removed the reference to open-jointed pipe to conform to the requirements in the Circular.

<u>New Rule I (ARM 17.36.320)</u>

<u>COMMENT #8</u>: Several commentors found Table 2 confusing. They suggested putting headings in all of the columns at the top of the page. One commentor stated that the gallons per day information in the column headings was not necessary because it is contained in the footnotes to the Table.

<u>RESPONSE</u>: The Department has reformatted Table 2 to provide headings for each column. The gallons per day information in the column headings was retained because it makes the columns easier to interpret.

COMMENT #9: Nine commentors expressed concerns with the thresholds in Table 2 for design by a professional engineer. Several commentors wanted every system using a pump to be designed by a professional engineer. Some commentors wanted every public or multi-user system to be designed by a professional engineer. One commentor wanted every wastewater system to be designed by a professional engineer. One commentor wanted every technically complex site to have its wastewater treatment system designed by a professional engineer.

RESPONSE: The requirements in Table 2 for design by a professional engineer were developed after consultation with the subdivision rules advisory task force and with the Montana Board of Engineers and Land Surveyors. The department believes that it should retain the design-flow thresholds that were the result of this consultation process. In any event, the new rules do not significantly change the scope of the existing requirements for design by a professional engineer.

COMMENT #10: Table 2 appears to indicate a preference for gravelless trenches over standard trenches for wastewater treatment systems with a flow greater than 2500 gallons per day (gpd). Two commentors also wanted standard absorption trenches allowed for systems between 2500 and 5000 gpd.

RESPONSE: Table 2 is not intended to indicate a preference for any type of system. Standard absorption trenches are not allowed for systems with flows greater than 2500 gpd because a system of this size would require pressure distribution and therefore would not be termed a standard absorption trench.

COMMENT #11: Two commentors stated that Table 2 should allow recirculating sand filters for systems with flows less than 5000 gpd.

RESPONSE: Recirculating sand filters may be approved for public and multiple-user systems with flows less than 5000 gpd through the waiver process.

COMMENT #12: If sanitarians design systems, the review fees should reflect the actual time and expenses involved in a particular design.

RESPONSE: This comment is outside the scope of the present rulemaking. The fee rule is currently undergoing review and may be the subject of a future rule revision.

COMMENT #13: Table 2 should allow evapotranspiration (ET) systems for flows greater than or equal to 5000 gpd.

RESPONSE: ET systems may be approved through the waiver process for individual/shared systems. However, for systems with flows greater than 2500 gpd, ET systems are not appropriate due to the large area needed for the ET system.

COMMENT #14: The 4-foot vertical separation distance in New Rule I(2) would not apply to ET systems because ET systems

do not have an infiltrative surface. ET systems should be allowed with less than a 4-foot separation to a limiting layer.

RESPONSE: The minimum separation distance of 4 feet to a limiting layer is intended to apply to all wastewater treatment systems addressed in the Circular, including ET systems. The Department has modified New Rule I(2) to clarify this point.

COMMENT #15: The vertical separation distance to a limiting layer on steep slopes should be expressed as 6 feet between the infiltrative surface and a limiting layer.

RESPONSE: No change is needed to incorporate this concept. New Rule I(2), as modified, identifies the separation distance as being between the infiltrative surface, or the liner of a lined system, and a limiting layer. Because the 6-foot steep slope limit is part of the same sentence in the rule, the reference to infiltrative surfaces and liners does not need to be restated.

COMMENT #16: A 2-foot vertical separation distance between the infiltrative surface and a limiting layer should be adequate when a sand filter is used. Another commentor stated that the separation distance should be 3 feet for sand mounds and sand filters. Another commentor stated that the separation distance should be 3 feet for sand filters because they provide superior treatment when compared to standard septic systems.

RESPONSE: The Department has not changed the 4-foot vertical separation distance for sand filters or sand mounds. There are not sufficient data relevant to Montana climate and conditions to indicate that a shorter separation to groundwater and limiting layers would be protective of public health.

COMMENT #17: What is the technical and legal basis for requiring replacement areas for subsurface sewage treatment areas? Another commentor stated that the replacement area for a sand filter should be a replacement for the sand filter but not for the drainfield.

RESPONSE: The technical basis for requiring a replacement area is the evidence that subsurface sewage treatment systems often fail during the lifetime of a typical home or commercial structure. Designating a replacement area helps to ensure that when a system fails the home or business will continue to have on-site wastewater treatment. The legal basis for the requirement is found at 76-4-104(6)(d), MCA, which requires evidence to be provided that a sewage disposal facility is sufficient in terms of capacity and dependability. As to the second part of the comment, sand filters are also subject to the replacement area requirements. However, the replacement area for a sand filter could be in the same location as the existing filter if it could be dug up and rebuilt in the same location.

New Rule II (ARM 17.36.321)

COMMENT #18: Circulars DEQ-4 and DEQ-2 reference each other. Will this cause conflicts?

RESPONSE: Circular DEQ-2 addresses design standards for wastewater facilities at municipal wastewater collection and treatment systems. This rule states that systems designed in accordance with DEQ-2 may not be used for individual, shared, or multi-user systems. The Department is not aware of any conflicts created by this provision.

COMMENT #19: Some commentors requested that the rules allow cut, fill, and drained sites. One commentor stated that the rules should allow gravity draining of sites in order to make a site suitable for wastewater treatment.

RESPONSE: The Department has determined that cut, fill, and artificially drained systems should not be used in new subdivisions due to the failure rate of these systems. These systems require continual maintenance that often is not done, and even normal precipitation events have caused surfacing of sewage and other failures. These types of systems may be used for replacement systems and problem solving where no other alternative is available.

COMMENT #20: The rules should not ban pit privies. Pit privies should be allowed for limited use at cabin and recreational sites.

RESPONSE: The rules do not allow pit privies in new subdivisions because the risk to public health increases when parcels are decreased in size. Since many cabin and recreational subdivisions are located near lakes and streams where populations are dense during some seasons, the Department believes that excluding pit privies from new subdivisions is appropriate to protect public health. See also, Response to Comment #39.

COMMENT #21: The reference to DEQ-4 in this rule should include the chapters where cut, fill, artificially drained, and other systems are addressed.

RESPONSE: The Department does not believe that a more specific reference is necessary in this case.

New Rule III (ARM 17.36.322)

COMMENT #22: Several commentors wanted to change the slope limitation to allow subsurface sewage treatment systems on steeper slopes. One commentor recommended changing the slope limit from 15% to 20%; another commentor recommended changing from 15% to 25%. One commentor recommended site-specific evaluations between 21% and 30% and another commentor recommended site-specific evaluations between 25% and 30%.

RESPONSE: The Department has retained the slope requirements as proposed. The slope requirements are based on

the recommendation of the subdivision rules advisory task force. The task force members are engineers, consultants, installers, and sanitarians who have considerable experience with the design and operation of wastewater treatment systems.

New Rule IV (ARM 17.36.323)

COMMENT #23: The Department should clarify which floodplain the Department is referencing in this rule.
RESPONSE: "Floodplain" is defined in the existing definitions as the 100-year floodplain.

COMMENT #24: Table 3 should be clarified to show that setback distances between drainfield/sand mounds and subsurface drains only include drainfields that are downgradient from the subsurface drain.
RESPONSE: The 10-foot separation between drainfields and subsurface drains applies to all drainfields, both upgradient and downgradient from subsurface drains. Consequently, Table 3 does not specify upgradient or downgradient except for slopes.

COMMENT #25: Several commentors asked whether Table 3 establishes setback distances between sealed components and floodplains.
RESPONSE: As indicated by the dashed line on the Table, Table 3 does not specify a setback distance between sealed components and the floodplain. Therefore, sealed components may be located in the floodplain.

COMMENT #26: The setback distance in Table 3 between roads and sealed components is excessive. Sealed components should be allowed on steep slopes, up hills, and across roads to allow sewer mains and lines to cross roads.
RESPONSE: The Department has revised Table 3 to allow sewer lines and mains to be located in roadways and on steep slopes provided that the lines and mains are safeguarded against damage. The Department has not changed the separation distances for septic tanks, grease traps, dosing tanks and pumping chambers because they should be located away from roads, escarpments, and steep slopes in order to maintain their structural integrity and to minimize compaction.

COMMENT #27: Why does Table 3 require a horizontal setback distance of 100 feet between wells and surface water, and why does the Department not allow waivers from this requirement?
RESPONSE: The 100-foot setback distance between wells and surface water was added to provide protection from cross-contamination between surface water and groundwater. The Department has modified Table 3 to allow waivers from this requirement in appropriate situations.
COMMENT #28: The change in the vertical setback distance from 4 feet to 2 feet above the floodplain elevation may lead

to more drainfield flooding. The 4-foot vertical separation from the floodplain should be maintained.

RESPONSE: New Rule IV allows a waiver of the 100-foot horizontal setback distance between drainfields/sand mounds and floodplains if the seasonally high water level of the surface water or spring is at least 100 feet from the drainfield/sand mound and the bottom of the drainfield is at least 2 feet above the floodplain elevation. This is a change from the prior rule, in which the required vertical separation above the floodplain was 4 feet. The task force recommended allowance of a 2-foot vertical separation. The Department has decided to retain the 2-foot separation because it would be allowed only through a waiver process. Before granting a waiver, the Department will consider the specific circumstances to evaluate the impacts on public health. The drainfield would still need to meet other separation distances, including the 100-foot horizontal separation from surface water and 4-foot vertical separation from groundwater or another limiting layer.

New Rule V (ARM 17.36.324)

COMMENT #29: This rule will make the Department a floodplain mapping agency.

RESPONSE: New Rule V requires the applicant to identify floodplains on the lot layout document. If the federal or state government has not designated the floodplain or if the location is in question, the applicant must submit adequate evidence to allow the Department to establish the location of the floodplain. The Department's determination in such cases will not have the status of a formal floodplain designation by an authorized agency. The purpose of the Department's determination will be to prevent the location of a subdivision's sewage treatment systems in areas where flooding could cause surfacing sewage.

New Rule VI (ARM 17.36.325)

COMMENT #30: Clarify the number of soil test pit locations that are required around a drainfield. Two commentors asked whether this rule required one test pit per drainfield and whether the Department could define "variability" as at least three drainfield lengths.

RESPONSE: This rule specifies one soil test hole for each drainfield. The test hole must be located within 25 feet of the boundary of the drainfield. The test hole must be placed, by a person knowledgeable in soil identification, to correctly identify the soils. The Department may require additional test holes if necessary to correctly identify the soils or to determine the presence or absence of a limiting layer in the drainfield location. The Department has not defined "variability" because it will depend on the type of soil and area covered by the sewage treatment system.

COMMENT #31: In New Rule VI(3)(a), the soil test hole depth should not have been increased from 7 to 8 feet. Seven feet is deep enough.

RESPONSE: The Department increased the test hole depth by one foot in order to standardize the test hole depth needed for most types of systems. The previous rules required varying depths for test holes depending on the presence or absence of limiting layers and groundwater.

COMMENT #32: Why is a percolation test necessary to size sewage treatment systems? Why does the Department not rely exclusively on soil test holes to size sewage treatment systems? The commentor also asked if three tests for multi-user and public systems are too many. The commentor did not believe that a request for fewer percolation tests should require a waiver.

RESPONSE: The Department has retained the percolation test requirement because it is required in the Sanitation in Subdivisions statutes. Multi-user and public drainfields are generally larger and additional tests are appropriate to correctly identify soils over the larger area. The waiver process is used to authorize fewer test holes because the waiver process allows the Department to request documentation to establish that fewer tests would be adequate to size a drainfield and to prevent pollution of state waters.

COMMENT #33: There appears to be an inconsistency between New Rule VI(3)(a) and VI(3)(d). Why is an 8-foot depth for soil test holes required if the Department is concerned with a limiting layer at 7 feet?

RESPONSE: The Department does not believe these provisions are inconsistent. The Department increased the required test hole depth to 8 feet in order to standardize the test hole depth needed for most types of systems. The one foot of additional depth in the test hole will not increase costs and will show whether a limiting layer at 7 feet is thicker than 12 inches. This should give the owner more flexibility in evaluating a variety of wastewater treatment systems for use on-site.

New Rule VII (ARM 17.36.326)

COMMENT #34: This rule should require an applicant for a public, multi-user, or shared system to submit an operation and maintenance manual acceptable to the Department.

RESPONSE: The Department has modified the rule accordingly.

COMMENT #35: The Department should not specify the type of administrative entity required for agreements and easements. The Department needs a section dealing with ownership and operation for all sizes of systems.

RESPONSE: For public and multiple-user sewage systems, the rule requires that some type of administrative entity be established to operate and maintain the system. The rule provides examples of acceptable entities, but gives the applicant some flexibility in selecting an appropriate entity. Ownership and operation entities for individual systems are not addressed because in most cases the entity will be the individual owner.

COMMENT #36: The Department should provide a model form for agreements.
RESPONSE: The Department can provide examples of forms that have been acceptable as shared-user agreements. No change in the rule is necessary to address this comment.

New Rule VIII (ARM 17.36.327)

COMMENT #37: Pumping an existing septic tank does not provide assurance that the wastewater treatment system is properly maintained or functioning.
RESPONSE: Tank pumping can provide some evidence about whether a system is operating adequately. Pumping is not the only evidence the Department will review to evaluate an existing system.

COMMENT #38: To what portion of an existing sewage system does the setback of 100 feet from wells apply?
RESPONSE: The setback applies to the drainfield or sand mound portion of the wastewater system. The Department has modified the rule to clarify this point.

COMMENT #39: Pit privies should be allowed, especially for remote sites.
RESPONSE: The Department has determined that pit privies located in a proposed subdivision must be replaced before approval of the subdivision. Most subdivisions result in an increased density of sewage systems on the original parcel. This increases the risk of contamination of surface and groundwater, which could affect public health. Pit privies on a part of the subdivided parcel are an unacceptable risk to public health. See also, Response to Comment #20.

New Rule IX (ARM 17.36.345)

COMMENT #40: What takes precedence if there is a conflict between Circular DEQ-4 and the rules?
RESPONSE: Both the rules and the Circular have the force of law. If there is a conflict, a court might attempt to resolve it by reviewing evidence of the intent of the drafters, or by construing the conflicting provisions within the larger context of the rules or Circular. In some cases, if the rule is general and the Circular is specific, the

Circular would control. The Department has attempted to eliminate all conflicts between the rules and the Circular.

DEPARTMENT CIRCULAR DEQ-4

The Department has adopted Circular DEQ-4 with some changes in response to comments received. The Department has also corrected typographical errors and changed wording to conform to terminology in the rules. Although Circular DEQ-4 is not reproduced in this Notice, the changes made to the Circular in response to comments are described in the following responses.

Chapter 1, Applicability

COMMENT #41: Design standards for pit privies and holding tanks should be included in this Circular, since they are included in the county minimum standard rules. See ARM 17.36.901.

RESPONSE: Adoption of requirements on this subject is outside the scope of the present rulemaking. The Department and the advisory task force are currently reviewing ARM Title 17, chapter 36, subchapter 9. If subchapter 9 is revised, requirements for pit privies and holding tanks may be added to Circular DEQ-4 or adopted as a separate circular.

COMMENT #42: Design standards for absorption beds should be included in this Circular, especially for replacement systems.

RESPONSE: Adoption of requirements on this subject is outside the scope of this rulemaking. Design requirements for absorption beds may be added to Circular DEQ-4 or adopted as a separate circular as part of the revision of Title 17, chapter 36, subchapter 9.

COMMENT #43: The applicability sections for intermittent and recirculating sand filters should be rewritten to remove language about overcoming limitations of shallow groundwater or bedrock. This discussion is misleading because reducing the vertical separation from a limiting layer is not allowed by the rules. Two commentors also thought the statement that ET may be used where the presence of a limiting layer precludes the use of a standard system gives the impression that these systems would be allowed with a limiting layer less than 4 feet below ground surface.

RESPONSE: The Department has modified the Circular to avoid the implication that these systems may be used where a limiting layer is less than 4 feet below ground surface.

COMMENT #44: Section 1.3 (Deviations) should be revised along with the waiver language in the rules.

RESPONSE: The Department and the advisory task force are currently reviewing the waiver and deviation section of

the rules. Section 1.3 may be revised in a later rulemaking, if necessary to conform to proposed changes to the waiver rules.

Chapter 2, Definitions

COMMENT #45: In the definition of "bedroom", the requirement to size the drainfield based on unfinished space in a structure is hard to enforce. There may be spaces in a home in addition to basements and bedrooms that can be used for sleeping.

RESPONSE: The definition of bedroom includes unfinished space in a basement because these areas are commonly used or converted for sleeping. Enforcement is possible by requiring design for this use even if the space is not currently being used for sleeping. Other spaces that are used for sleeping or that increase wastewater flow in the home should be disclosed during the wastewater treatment permit process at the local level. If an expansion of use occurs, the owner is required to obtain review and approval of this change under the Sanitation in Subdivisions laws.

COMMENT #46: The definition of "design flow" should be clarified for ET systems. This commentor recommended that, for ET systems, design flow be based on actual flow.

RESPONSE: The design flow definition addresses when peak flow and average daily flow are to be used. If actual water use data from similar facilities is known, design flow can be based on this data and explained during the application review process. ET systems must be designed to store all wastewater that is not evaporated, and, therefore, must be designed using peak flows.

COMMENT #47: Based on the definition of "dwelling or residence", if water is not supplied by a piped system, would this make the facility no longer a regulated structure? The commentor also stated that local governments have no authority to regulate water systems except in association with the department review of subdivisions.

RESPONSE: The definition of "dwelling or residence" includes only buildings and structures that are intended or designed for human occupancy and are supplied with water by a piped water system. Structures that do not fall within the definition are not treated as dwellings or residences under the Circular. Local governments and boards of health do have authority to regulate wastewater systems under 50-2-116(1)(i) and 76-3-504, MCA.

COMMENT #48: The definitions for high and low strength waste should be clarified to make sure one of the definitions covers effluent that is "equal to" the described limits.

RESPONSE: The residential strength wastewater definition has been changed to include this term.

COMMENT #49: The definitions for individual, shared and multi-user sewage systems should be changed to use the term "commercial structures" instead of "commercial facilities".
RESPONSE: The Department has modified the definitions in the rules and Circular to use the term "commercial structures" rather than "commercial facilities". See Response to Comment #5.

COMMENT #50: In the definition of "on-site wastewater treatment system," the language "within the boundary of each parcel" should be removed to allow a wastewater treatment system to be located outside of the parcel.
RESPONSE: The Department added this language to clarify the meaning of "on-site". The language does not preclude the use of a wastewater treatment system outside of the parcel.

Chapter 3, Site Evaluation

COMMENT #51: Section 3.4 should be modified to allow the reviewing authority to require additional test pits.
RESPONSE: The authority to require additional test pits for variable soils has been provided in New Rule IV(3)(b).

COMMENT #52: The minimum depth for the soil test hole in Section 3.4.1 is not consistent with the depth in the rules.
RESPONSE: The depth has been changed from 7 feet to 8 feet in the Circular to correct this discrepancy.

COMMENT #53: The percolation test location in Section 3.5 is not consistent with the location used in Appendix A.
RESPONSE: Appendix A has been modified to conform to the rules and Section 3.5.

Chapter 4, Site Modifications

COMMENT #54: Section 4.2.2.1 requires a 10 foot deep soil test hole for cut systems, but only 7 feet is required in the soil profile description (Section 3.4.1) and 8 feet is required in the proposed rules. One commentor wanted cut, fill, and drained sites allowed.
RESPONSE: The Department has required a 10-foot depth for a soil test hole for a cut system because most cut systems are used on steep slopes. This depth is needed to provide evidence that adequate soils are available for treatment and disposal of effluent without leading to surfacing of effluent downslope from the cut. The depth of the test hole for other systems is 8 feet. Cut, fill, and drained systems are not allowed for new systems, but can be used for replacement systems. See Response to Comment #19.

COMMENT #55: In Section 4.2.2.2, cut systems should be allowed on slopes greater than 25% for drainfields and for replacement sites.

RESPONSE: The Department has addressed the use of cut systems and steep slopes in the rules. Cut systems are not allowed for new systems but can be used for replacement systems. Cut systems should not be allowed on steeper slopes because the risk of failure increases as the slope increases. See Response to Comment #19.

COMMENT #56: In Section 4.3.1.2, is the Department requiring a replacement area for a replacement area, and isn't this redundant?

RESPONSE: The Department is not requiring a replacement area for a replacement area. Since fill systems are allowed only for replacement systems, this section is referring to the replacement system that is being built.

COMMENT #57: In the design requirements for fill systems contained in Section 4.3, should a percolation test be required before and after the placement of fill material?

RESPONSE: This Section requires that fill systems not be installed on soils with percolation rates slower than 60 minutes per inch. This may necessitate performing a percolation test to verify whether soils are suitable for a fill system. Subsequently, a percolation test in the fill material is needed to size the drainfield.

Chapter 5, Wastewater Flow

COMMENT #58: In Table 5-1, why was the motel category deleted? There are motels that are served by on-site systems.

RESPONSE: The Department has modified the Table to include the motel category with the hotel category.

COMMENT #59: In Section 5.4, why can't pretreated wastewater go to a standard drainfield? This section should also be changed to allow high strength wastewater to be disposed of in a recirculating sand filter system.

RESPONSE: This section does not prohibit discharging pretreated wastewater to a standard drainfield. This section has been changed to allow high strength wastewater to be disposed of in a recirculating sand filter system.

Chapter 6, Design of Sewers

COMMENT #60: Section 6.7.1 should not allow use of ASTM D-2729 sewer pipe because it is brittle and more easily damaged during backfilling than other listed pipe types.

RESPONSE: The Department agrees and has deleted the reference to ASTM D-2729 sewer pipe.

Chapter 7, Septic Tanks

COMMENT #61: Two commentors expressed concern with the allowance, in Section 7.1.1, of disposal of water softener backwash into a septic tank. One commentor recommended using a trench. One commentor suggested that the backwash should never be allowed to enter a septic tank, but should be mixed with gypsum and disposed of in a separate trench with drainrock.

RESPONSE: Section 7.1.1 prohibits discharge of backwash from a water softener into a septic tank and a drainfield area with clay soils. The Department realizes that water softener backwash may cause problems with other types of systems. However, the complexity of the issues warrants additional research and input from affected parties. Further requirements for disposal of backwash may be added in future rulemaking.

COMMENT #62: In Section 7.2.1, the wording "over the top of the tank" should be added at the end of the sentence discussing burial of the tank.

RESPONSE: The Department has added the suggested wording to clarify what is meant by 6 feet of burial.

COMMENT #63: Two commentors recommended referencing, in Section 7.2.6, the ANSI/NSF Standard 46 for effluent filter standards. One commentor did not believe that filters should be mandatory.

RESPONSE: The Department has added the reference to ANSI/NSF Standard 46 in the design standard for effluent filters. The Department believes that effluent filters should be required. Use of effluent filters will help prevent premature failure of drainfields, and the benefits of filters outweigh their costs.

COMMENT #64: Regarding Section 7.2.6.4, has the Department tested specific high level alarms for septic tanks to document whether floating sludge and scum interfere with the alarm function, especially with the use of effluent filters?

RESPONSE: The Department has not conducted the described tests. However, the Department does not expect effluent filters to add to the problem. Counties that have been requiring filters and manufacturers that have been using the effluent filters have not reported any problems.

COMMENT #65: One commentor supported the requirement, in Section 7.2.9.1.A, of a 1500 gallon septic tank for a four-bedroom house. Another commentor did not support requiring a 1500 septic tank for a four bedroom house, and stated that a 1000 gallon tank was large enough.

RESPONSE: The Department has retained this requirement as proposed. The experience of tank manufacturers and installers indicates that the proposed sizes are appropriate.

COMMENT #66: In Section 7.2.9.1.B, add the following wording to the beginning of the sentence: "In situations where bedrooms are not used to size the septic tank, and" to clarify use of this section.

RESPONSE: The Department has added this language for clarification.

COMMENT #67: In Section 7.2.10, add the following wording at the end of the sentence to provide clarification: "and meet the requirements of Section 5.4."

RESPONSE: The Department has added this language for clarification.

Chapter 8, Dosing System Design

COMMENT #68: In Section 8.1, the requirement for pressure distribution should be based on percolation rates of 46-53.3 minutes per inch (mpi) rather than linear feet for drainfields with soils that have percolation rates over 60 mpi. One commentor wanted clarification of why 510 lineal feet was selected as the threshold for pressure dosing rather than 500 feet. Another commentor recommended using pressure dosing for all drainfields over 500 feet in length.

RESPONSE: The Department has not changed the percolation rates for conventional drainfields and has not adopted the suggestion that pressure distribution be required for percolation rates over 53.3 mpi. The proposed language was based on the recommendation of the task force about what constitutes sound engineering practice. Section 8.1 has been changed to require pressure dosing for drainfields with more than 500 lineal feet of distribution lines.

COMMENT #69: In Section 8.2, the required dosing volume for a gravity-dosed drainfield does not take into account sandy soils with a nearby limiting layer. Smaller doses would be appropriate in that situation. Another commentor stated that, in Section 8.3, the minimum pressure should be five feet of head if 1/8 inch holes are used.

RESPONSE: These sections have not been changed. The criteria were based on the recommendation of the task force about what constitutes sound engineering practice.

COMMENT #70: In Section 8.5, it is not appropriate to limit dose time for pressure distribution designs.

RESPONSE: This section has not been changed. Based on the recommendations of the task force, Section 8.5 limits the duration of each discharge in order to promote uniform distribution.

COMMENT #71: In Section 8.8.1, why is a minimum reserve volume necessary if duplex pumps are used? If one pump goes out, the alarm will notify the operator and the system will continue to operate.

RESPONSE: The Circular requires a minimum reserve volume to provide a margin of safety in case the alarm or other parts of the system malfunction.

COMMENT #72: Section 8.9 should reference the 10% variation allowance noted in Section 8.6.
RESPONSE: This Section has been changed to state that in field tests the variation should be less than 10%. It should be feasible to adjust squirt height in the field to achieve better than the 10% variation specified in the design requirements of Section 8.6.

Chapter 9, Standard Absorption Trenches

COMMENT #73: Table 9-1 may invite undersizing based on poorly conducted percolation tests. The commentor suggested changing the table to include lineal feet for the fourth and subsequent bedrooms at the recommended reduced flows from Section 5.1. It was suggested that Table 9-1 identify the maximum linear feet of drainfield required for a range of percolation rates. The commentor also stated that clay loam, which is listed in four categories, should be listed in only one. Also, sandy clay loam should have a higher application rate than clay loam, and silty clay loam would more realistically have a percolation rate of 60 minutes per inch rather than 31.
RESPONSE: Table 9-1 has not been changed. The table was developed in consultation with the task force and with the input of drainfield sizing professionals. The table also reflects research conducted for other states and is comparable to the other states' regulations. If portions of the table are found to be problematic in the future, the Department will propose revisions in a subsequent rulemaking.

COMMENT #74: Table 9.1 compares soil textures with their estimated percolation rates. Because the soil textures and types can have different structures that greatly affect the percolation rate of soils, there is a wide range of percolation rates for most soil types. Comparison of the soil profile report, percolation rate, and USDA soils report should be used to select the applicable square footage.
RESPONSE: The Department has not changed this table. If there is a conflict between the percolation rate and the soils information, the drainfield will be sized by whichever factor requires a larger drainfield. This will help prevent undersizing, which can cause drainfield failure and risks to public health.

COMMENT #75: In Section 9.3.3, why is a different trench wall separation required for gravity versus pressure-dosed systems?
RESPONSE: The different trench wall separation is based on the recommendation of the task force about what constitutes

sound engineering practice. Because pressure dosing results in better distribution of effluent, the trenches can be closer together.

COMMENT #76: In Section 9.6, how many layers of building paper is "several"? Is the required five inches of straw measured loose or compacted? If you compact the five inches of straw, would it replace five inches of soil cover?
RESPONSE: The Department has clarified this section to require 2-4 layers of building paper. Straw may not be compacted and does not replace five inches of soil cover.

COMMENT #77: The following language should be added to Section 9.7.E to set minimum wall thickness for distribution boxes: "If constructed using concrete, the concrete must meet the same requirements as concrete for septic tanks in 7.2.2. Minimum wall, floor and lid thickness for concrete distribution boxes must be 2 inches. Reinforcement is not required for concrete distribution boxes."
RESPONSE: The Department has inserted the recommended language.

COMMENT #78: Section 9.8.2 should be modified to require marking of distribution boxes with a piece of iron or suitable marker. There is a concern about freeze-up in shallow distribution boxes that have a riser. Another commentor expressed a concern that risers for distribution boxes would not be commercially available.
RESPONSE: To allow designers to make adjustments based upon concerns about freezing, Section 9.8.2 has been modified to allow access to a distribution box either by means of a riser or through suitable marking. Risers are commercially available for distribution boxes.

Chapter 11, At-Grade Absorption Trenches

COMMENT #79: Section 11.1 should include a reference to leaching chambers, since Chapter 13 refers back to this section. Another commentor stated that the 6% limitation for slopes should be changed to at least 10%.
RESPONSE: The Department has added language to Chapters 11 and 12 to indicate that chamber systems may be used in place of pipe and drainrock. The Department has not changed the slope limitation. This limitation was based on the recommendation of the task force about what constitutes sound engineering practice.

Chapter 12, Sand-Lined Absorption Trenches

COMMENT #80: The specification for sand in a sand-lined trench is not necessary when the trench is installed in sandy soils. One commentor noted that Section 12.1 allows 24" trenches while Section 12.2 requires 36" trenches. Another

commentor expressed a concern with the sizing of gravity-dosed sand-lined trenches, and asked whether they should be sized by 1-foot gravel or 3-foot trench width.

RESPONSE: The Department has not made changes to these sections. The sand specification is necessary because most sandy soils are not uniform and would not be suitable for sand-lined trenches. If they meet this specification, sandy soils could be used. The 36"-wide trench is required only when the side walls of the trench must be sand-lined because pressure distribution is not used. The 36"-wide trench is an alternative construction method that must be followed if the V-ditch in a 24"-wide trench method is not used. The drainfield application rate for a sand-lined trench is based on a 24"-wide trench, regardless of the width of the trench actually constructed.

Chapter 13, Gravelless Absorption Trenches

COMMENT #81: Chapter 13 should be renamed "gravelless leaching chambers" because gravelless pipe has been eliminated.

RESPONSE: The Department does not believe that a change in the chapter name is warranted.

COMMENT #82: In Section 13.1, the first sentence should be rewritten because it does not clearly describe gravelless or chambered systems.

RESPONSE: The Department has changed this section to state that gravelless systems include infiltration chambers. If it is necessary to add standards for other gravelless systems in the future, this is the section where they could be addressed.

COMMENT #83: In Section 13.2.4, the application rate should not be increased by a 1.4 factor unless the system is pressure-dosed.

RESPONSE: The Department has not changed this section. The 1.4 increase factor was based on the recommendation of the task force about what constitutes sound engineering practice.

Chapter 14, Elevated Sand Mounds

COMMENT #84: In Section 14.2.6, a 2:1 length/width ratio should be used for sand mounds rather than 3:1. This ratio should be based on bed area and not on basal area.

RESPONSE: The Department has not changed this section. The design criteria are based on the recommendation of the task force about what constitutes sound engineering practice.

COMMENT #85: In Section 14.2.7, the 25-foot down-slope setback should be clarified as to what elements are subject to the required separation.

RESPONSE: The Department believes that this section is clear. Land may not be disturbed down-slope of an elevated sand mound for the distance specified in the regulations.

COMMENT #86: In Section 14.3.5, there should be a requirement for observation ports into the gravel.

RESPONSE: The Department agrees, and has added language recommending, but not requiring, observation ports into the gravel.

Chapter 15, Intermittent Sand Filters

COMMENT #87: Regardless of soil type, the size of a drainfield should be reduced by 50% whenever a sand filter is used.

RESPONSE: The Department has determined that downsizing may occur only where soils have percolation rates between 3 and 60 minutes per inch. This is necessary to prevent inadequate treatment in soils with faster or slower percolation rates.

COMMENT #88: Why does Section 15.1 prohibit intermittent sand filters (ISF) from discharging into ET systems? Another commentor noted that Section 1.2.1.6 implies that ISF systems meet a portion of the vertical separation requirement of 4 feet and wanted to know why this section is not consistent with Section 1.2.1.6.

RESPONSE: This section does require that IFS systems discharge to a drainfield for disposal of the effluent. It does not allow an ISF system to discharge into an ET system because that is not the general practice. An applicant can request a deviation to allow discharge from an ISF system into an ET system. As to the second comment, Section 1.2.1.6 has been corrected to be consistent with the rules on vertical separation. See also, Response to Comment #14.

COMMENT #89: In Section 15.2.3, it is unnecessary to require a collection line for intermittent sand filters with a central pump chamber.

RESPONSE: The Department has not changed this section. The design standards are based on the recommendation of the task force about what constitutes sound engineering practice.

COMMENT #90: The second sentence in Section 15.2.5 is confusing and unnecessary. The gravel layer referred to in this sentence is covered in 15.2.8, and Sections 15.2.5 and 15.2.8 require different depths of material for the same item.

RESPONSE: The Department agrees and has deleted the second sentence.

COMMENT #91: In Section 15.2.6, remove the reference to two feet to groundwater, since it is not allowed under the rules. Another commentor expressed concern that sand filters

do not remove solvents or viruses, and would not protect the public from these contaminants.

RESPONSE: The second sentence referring to two feet to groundwater and bedrock has been deleted in order to be consistent with the rules. The Department recognizes that sand filters are not designed to remove contaminants such as solvents and viruses.

COMMENT #92: In Section 15.4, what happens if you exceed the 0.25 gallon/dose/orifice or the one dose/hour/zone? The commentor has seen situations where the frequency of doses/zone exceeded the one dose/hour/zone without any adverse effects to treatment.

RESPONSE: The Department has not changed this section. The required limits are based on the recommendation of the task force about what constitutes sound engineering practice. Every system must be designed to prevent operation outside of these limits.

Chapter 16, Recirculating Sand Filters

COMMENT #93: Why does Section 16.1 prohibit recirculating sand filter (RSF) systems from discharging into ET systems?

RESPONSE: This section requires RSF systems to discharge to a drainfield for disposal of effluent. It does not allow discharge to an ET system because that is not the general practice. An applicant can request a deviation to allow discharge into an ET system.

COMMENT #94: Section 16.2.3 is confusing, and a gradation chart should not be necessary. The commentor stated that this section is not necessary because the layer of gravel is already covered in Section 16.2.2. Another commentor suggested that all sand and gravel in the sand filter should be washed and free of clay, soil, and silt.

RESPONSE: The Department has not changed this section. The gradation chart was based on the recommendation of the task force about what constitutes sound engineering practice. The requirement that the gravel be washed is already contained in Sections 16.2.3 and 16.2.4.

COMMENT #95: In Section 16.2.8, the dose volume should be 1/2 to 1 gallon/orifice/dose.

RESPONSE: This section states that the maximum dose volume is 2 gallons/orifice/day. Dose volumes of 1/2 to 1 gallon/orifice/day would be allowed.

Chapter 18, Evapotranspiration Absorption Systems

COMMENT #96: In Section 18.3.2, remove the reference to track-driven vehicles, because track-driven vehicles cause much less compaction than wheel-mounted units.

RESPONSE: The Department has not changed this section. Although tracks may cause less compaction than wheels, both types of vehicle cause undesirable compaction.

Chapter 19, Evapotranspiration Systems

COMMENT #97: This chapter has not properly addressed the sizing of ET systems. The commentor stated that the design requirements for ET systems will result in systems that are too large.
RESPONSE: Section 19.3.5 requires a design report that includes a water balance for a one-year period. This must be part of the design for ET systems and should insure that the systems are properly sized. The risk to public health would be much greater from undersized and failing ET systems than from oversized systems.

COMMENT #98: In Section 19.1, ET systems should be allowed when horizontal and vertical separation distances cannot be met.
RESPONSE: The vertical and horizontal separation distances have been addressed in the discussion on the rules. The Department has decided to set minimum horizontal and vertical separation distances that all systems must meet to protect public health. See Responses to Comments #14 and #88.

COMMENT #99: Section 19.2 should include size specifications for coarse sand and drain rock. Infiltrators should be used to increase storage volume in the bed, and should be used in ET systems to increase void volume.
RESPONSE: These specifications are already included, because chambered systems may be used with ET systems. See Chapter 13.

COMMENT #100: In Section 19.3.4, the ET bed should not be required to be parallel to the land contour.
RESPONSE: The Department has not changed this section. The runoff from an ET system failure could cause greater risk to public health and water sources if the piping ran perpendicular to the slope.

COMMENT #101: ET systems designed according to Section 19.3.5 will be oversized. One area of the state has ET systems sized at one-half to one-third of the size required in this Circular.
RESPONSE: The Department has not changed this section. The sizing is based on the recommendation of the task force about what constitutes sound engineering practice throughout the state.

Chapter 20, Aerobic Sewage Treatment Units

COMMENT #102: In Section 20.9.6.8, allowing the owner to be his own service provider may cause problems.

RESPONSE: The Department has not changed this section. Depending on the complexity of the system, an owner may be capable of maintaining the system and the manufacturer may allow the owner to maintain the system.

Appendix A, Percolation Test Procedure

COMMENT #103: There is a discrepancy between the requirement in the rules that percolation tests be located within the boundary of the drainfield and the requirement in Appendix A of Circular DEQ-4, which states that the percolation test must be performed within 20 feet of the boundary of the drainfield.

RESPONSE: The Department has revised the provisions in Appendix A regarding percolation test location to conform to New Rule VI.

COMMENT #104: The percolation test form should show the distance of the reference point above the bottom of the hole. The commentor also suggested that all soils should be pre-soaked for 4-6 hours.

RESPONSE: The reference point has been added to the percolation test form. The Department does not believe that a pre-soak for 4-6 hours is necessary for soils with fast percolation rates. Fast percolation rate soils or sandy/gravely soils will become moist after a shorter pre-soak period than 4-6 hours. Pre-soaking for longer than recommended in the percolation test procedure would not affect the outcome of the test. Pre-soaking the soils with slower percolation rates is necessary because these soils accept water at a slower rate and the percolation test is intended to measure the rate at which moist soil will accept effluent.

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 November 27, 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 AMENDMENT (PUBLIC WATER SUPPLY) (WATER QUALITY)

TO: All Concerned Persons

1. On July 27, 2000, the Board published a notice of the proposed amendment of the above-stated rules at page 1859, 2000 Montana Administrative Register, Issue No. 14. A public hearing was held on August 16, 2000.

2. The Board has amended ARM 17.38.101, 17.36.902, 17.36.903, and 17.36.907 as proposed.

3. In the notice of proposed amendment, the Board proposed to amend ARM 17.38.101 to adopt by reference the Department of Environmental Quality's new Circular DEQ-4 and the Department's New Rules I through VI, VIII and IX. The full text of the proposed new rules was set out in a parallel rulemaking notice of the Department. See, MAR Notice No. 17-127, 2000 MAR, Issue No. 14, page 1832.

4. Numerous public comments were received regarding proposed Circular DEQ-4 and the new rules. A summary of the comments received, together with the Department's responses, is contained in the Department's Notice of Amendment, Repeal, and Adoption for MAR Notice 17-127 in this issue of the Register.

5. The Board has adopted by reference New Rules II (ARM 17.36.321), III (ARM 17.36.322), V (ARM 17.36.324), VI (ARM 17.36.325), and IX (ARM 17.36.345) with the language proposed for those new rules in the Department's MAR Notice No. 17-127. The Board has adopted Circular DEQ-4 and New Rules I (ARM 17.36.320), IV (ARM 17.36.323), and VIII (ARM 17.36.327) with changes in the language of those new rules made in response to comments as indicated in the Department's Notice of Amendment, Repeal, and Adoption for MAR Notice 17-127 in this issue of the Register.

6. One public comment was received regarding the Board's proposed amendment to the definition of "on-site wastewater treatment system" in ARM 17.36.903(9). The comment is summarized below and is followed by the Board's response.

COMMENT: The commentor questioned the purpose of adding the language "within the boundary of each lot or parcel" and questioned whether this language would preclude the use of easements.

RESPONSE: The definition, as amended, reads as follows: "On-site wastewater treatment system" means a system for collection, transportation, treatment or disposal of

wastewater within the boundary of each lot or parcel. The Board has added the language in question to clarify the meaning of "on-site". The definition does not preclude the use of easements where appropriate.

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State November 27, 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, 17.38.244, 17.38.248, and 17.38.262; 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, and 17.38.270 pertaining to public water supplies)	NOTICE OF AMENDMENT, ADOPTION AND REPEAL (PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On July 27, 2000, the Board published a notice of public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 1879, 2000 Montana Administrative Register, issue number 14. A public hearing was held on August 29, 2000.

2. The Board has amended ARM 17.38.202, 17.38.206, 17.38.207, 17.38.215, 17.38.217, 17.38.225, 17.38.248, and 17.38.262 as proposed.

3. The Board has adopted NEW RULE I (ARM 17.38.201A) as proposed, with the following change:

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) and (b) remain as proposed.

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

(2) and (3) remain as proposed.

(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.

4. The Board has repealed rules 17.38.218, 17.38.226, 17.38.235, 17.38.255, 17.38.256, 17.38.257, 17.38.258, 17.38.259, 17.38.260, and 17.38.270 as proposed.

5. The Board has amended ARM 17.38.203, 17.38.204, 17.38.205, 17.38.208, 17.38.216, 17.38.234, 17.38.239, and 17.38.244 as proposed, with the following changes. Stricken matter is interlined and new matter is underlined.

17.38.203 MAXIMUM INORGANIC CHEMICAL CONTAMINANT LEVELS

(1) 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.

17.38.204 MAXIMUM ORGANIC CHEMICAL CONTAMINANT LEVELS

(1) The board hereby adopts and incorporates by reference 40 CFR 141.12, ~~141.60,~~ 141.61(a), 141.61~~(b)~~(c), 141.64(a), and 141.64(b), which set forth maximum contaminant levels for synthetic organic contaminants, volatile organic contaminants, and disinfection byproducts.

17.38.205 MAXIMUM TURBIDITY CONTAMINANT LEVELS

(1) The board hereby adopts and incorporates by reference 40 CFR 141.13, 141.73, 141.173(a)(1), and 141.173(a)(3), which set forth maximum contaminant levels for turbidity, except for the following changes:

(a) and (b) remain as proposed.

(2) remains as proposed.

17.38.208 TREATMENT REQUIREMENTS

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

(a) 40 CFR 141.70(b)(1) is modified to read "It meets the requirements for avoiding filtration in 40 CFR 141.71 as amended in ARM 17.38.208, and the disinfection requirements in 40 CFR 141.72(a), or".

(b) 40 CFR 141.70(b)(2) is modified to read "It meets the filtration requirements in 40 CFR 141.73 and in ARM 17.38.205(1)(b)(ii), and the disinfection requirements in 40 CFR 141.72(a)."

(c) 40 CFR 141.70(c) is modified to read "Each public water supply system, except a transient non-community system, using a surface water source or a ground water source under the direct influence of surface water must be operated by qualified personnel who meet the requirements specified in Title 37, chapter 42, parts 1 through 3, MCA."

(2)(a) through (c) remain as proposed.

(d) The first two sentences in the last paragraph of 40 CFR 141.71(b)(2)(iii) 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) remains as proposed.

(3) through (5) remain as proposed.

17.38.216 CHEMICAL AND RADIOLOGICAL QUALITY SAMPLES

(1) and (2) remain as proposed.

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

(f) 40 CFR 141.28, which sets forth requirements for the use of certified laboratories by public water system suppliers and by the department, except that, for the purpose of this subchapter, the phrase "certified laboratory" means "approved laboratory" as defined in ARM 17.38.202. References to 40 CFR 141.21 in 40 CFR 141.28 also refer to ARM 17.38.215;

(g) 40 CFR ~~141.28,~~ 141.29, which sets forth sampling requirements for consecutive public water systems;

(h) through (t) remain as proposed.

(6) remains as proposed but is renumbered (4).

~~(4)~~(5) A supplier shall sample ~~Every~~ every 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~~ the public water supply~~:~~. A supplier shall also sample ~~and analyze~~ a new source serving a transient non-community water system for analysis of either total dissolved solids (TDS) or specific conductance.

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

17.38.234 TESTING AND SAMPLING RECORDS AND REPORTING REQUIREMENTS (1) ~~In order to insure~~ 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) through (5) remain as proposed.

(6)(a) through (d) remain as proposed.

(e) 40 CFR 141.90 and 141.91, which ~~set~~ sets forth reporting and recordkeeping requirements for lead and copper;

(f) and (g) remain as proposed.

(6) and (7) remain as proposed but are renumbered (7) and (8).

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) 40 CFR 141.32, which sets forth public notification requirements; ~~and~~

(b) 40 CFR 141.35(d), which sets forth public notification requirements for unregulated chemicals~~.~~; and

(c) 40 CFR 141.85, which sets forth public education and supplemental monitoring requirements.

(2) through (4) remain as proposed.

17.38.244 VARIANCES AND EXEMPTIONS (1) The board hereby adopts and incorporates by reference the following:

(a) remains as proposed.

~~(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) through (g) remain as proposed but are renumbered (b) through (e).

6. The Board received the following comments; Board responses follow:

COMMENT 1: The United States Environmental Protection Agency (EPA) noted that the incorporation of 40 CFR 141.73 by reference in ARM 17.38.205(1)(b)(i) should require surface water systems serving more than 10,000 people to meet a more stringent standard for turbidity beginning on January 1, 2002.
RESPONSE: As proposed, ARM 17.38.205(1)(b)(i) incorporates 40 CFR 141.73, which contains the more rigorous standard with an effective date of December 17, 2001 (per 40 CFR 141.173(a)). Therefore, the requested change is unnecessary, and the Board declines to make the requested change. See also COMMENT 2 below.

COMMENT 2: EPA requested that the Board adopt 40 CFR 141.173(a)(1) and (a)(3), which are required if the Department wishes to retain its role as the agency with primacy for implementing the Interim Enhanced Surface Water Treatment Rule (IESWTR).

RESPONSE: The Board has amended ARM 17.38.205(1) to incorporate these subsections by reference.

COMMENT 3: EPA requested that the Board adopt requirements into ARM 17.38.225(5) for monitoring of transient noncommunity surface water supplies by certified water system operators.

RESPONSE: The federal Safe Drinking Water Act (SDWA) and Sections 37-42-302 and 37-42-102, MCA, require owners of community and nontransient noncommunity public water supplies to retain certified water system operators. There is no such requirement in the SDWA or Montana law for transient supplies, so the Board declines to modify ARM 17.38.225(5).

COMMENT 4: EPA asked that, in ARM 17.38.204(1), the Board adopt by reference 40 CFR 141.61(c) for synthetic organic contaminant maximum contaminant level (MCLs) instead of 40 CFR 141.61(b). 40 CFR 141.61(b) sets forth requirements for treatment technologies.

RESPONSE: The Board has amended ARM 17.38.204(1) to adopt this requirement as requested.

COMMENT 5: EPA requested that the Board adopt 40 CFR 141.3, "Coverage", 141.5, "Siting requirements", 141.43, "Prohibition on use of lead pipes, solder, flux", 141.85, "Public education supplemental monitoring requirements", and 141.91, "Recordkeeping requirements".

RESPONSE: 40 CFR 141.3: The Department regulates the water supplies that are excluded from SDWA coverage in 40 CFR 141.3 because Montana's definition of public water supply system includes the systems that are excluded in 40 CFR 141.3. The Board therefore will not adopt 40 CFR 141.3 because the definition of "public water supply system" in Section 76-5-101, MCA, is more stringent than the definition of "public water system" in 40 CFR 141.2.

40 CFR 141.5: Because 40 CFR 141.5 includes requirements regarding siting of public water supplies, and rules concerning siting are located in ARM Title 17, chapter 38, subchapter 1, the Board has determined that any adoption of 40 CFR 141.5 would have to be made in subchapter 1. However, since amendments to subchapter 1 were not addressed in the notice of hearing for these rule amendments, any amendments to subchapter 1 would be beyond the scope of this rulemaking, and the Board declines to make this change. The Board may amend subchapter 1 to adopt 40 CFR 141.5 at a later date.

40 CFR 141.43: These requirements have already been adopted into the Plumbing Code administered by the Montana Department of Commerce. The Department of Environmental Quality does not have the authority to regulate plumbing in homes, businesses, and schools, etc.

40 CFR 141.85: The Board agrees and has adopted this section and incorporated it by reference into ARM 17.38.239(1)(c).

40 CFR 141.91: The Board agrees and has adopted this section and incorporated it by reference into ARM 17.38.234(6)(e).

COMMENT 6: EPA requested that the Board not adopt the federal definition of "Act" in 40 CFR 141.2, which was proposed to be adopted and incorporated by reference in ARM 17.38.202.

RESPONSE: Because the federal regulations being adopted and incorporated by reference are based on and refer to the SDWA, and the Montana rules are based on and refer to the Montana public water supply laws, it is necessary to distinguish between these laws in the rules.

The Board believes it is necessary to adopt and incorporate by reference the definition of "Act" in the federal regulations, so that references to "Act" in the federal regulations being adopted by reference will refer to the SDWA. The references to "Act" in the Montana rules will refer to the Montana public water supply laws, Title 75, chapter 6, part 1, MCA.

Therefore, the Board declines to make the change requested.

COMMENT 7: EPA stated that existing requirements for monitoring of new public water supply sources were not, but should have been, retained in ARM 17.38.215.

RESPONSE: These requirements were retained in ARM 17.38.215(6).

COMMENT 8: EPA asked whether existing requirements that are more stringent than federal requirements for monitoring of inorganic contaminants were retained in ARM 17.38.216.

RESPONSE: Yes. These requirements were retained in ARM 17.38.216(1)(a) through (k).

COMMENT 9: EPA asked whether existing requirements that are more stringent than federal requirements (in addition to those referred to in COMMENTS 7 and 8 above) for monitoring new public water supply sources would be retained in ARM 17.38.216.

RESPONSE: Yes. These requirements have been retained in ARM 17.38.216(4), but there is an error in numbering of this and the preceding subsection. Proposed subsection 17.38.216(4) has been renumbered to 17.38.216(5), and the preceding subsection has been renumbered 17.38.216(4).

COMMENT 10: EPA commented that the rulemaking notice stated that existing requirements for additional monitoring following

an MCL violation were being retained in ARM 17.38.216, but that EPA did not find these requirements.

RESPONSE: These requirements are retained in ARM 17.38.216(8), which has been renumbered ARM 17.38.216(6).

COMMENT 11: EPA recommended that the proposed definition of "approved laboratory" in ARM 17.38.202(2) include the phrase "and certified according to 40 CFR part 141".

RESPONSE: The Board agrees that "certified" laboratory in the federal regulations should be defined as a laboratory licensed and approved by the State of Montana. The Board has therefore modified 40 CFR 141.28, as it has been adopted and incorporated by reference in ARM 17.38.216(3)(f), to define a "certified" laboratory as one licensed and approved by the State of Montana.

COMMENT 12: EPA stated that it appears that ARM 17.38.208(2)(d) should reference 40 CFR 141.71(b)(2)(iii) rather than 40 CFR 141.71(b)(2).

RESPONSE: The Board agrees and has made the requested change.

COMMENT 13: EPA requested that the Board adopt 40 CFR 141.70(b), "general requirements for treatment of surface waters", in addition to 141.70(a), to ensure that the Board's rules are as stringent as the federal regulations.

RESPONSE: The Board agrees and has incorporated 40 CFR 141.70(b) and (c) by reference into ARM 17.38.208(1), with modifications to retain existing requirements that are more stringent than the federal requirements.

COMMENT 14: EPA suggested, as a recommendation only, that the Board incorporate into ARM 17.38.234(5) the phrase "one or more of the following technologies" after the existing term "employing". EPA was concerned that certain technologies, such as direct filtration, might be excluded from this requirement.

RESPONSE: The Board has not made the requested change because it believes this additional phrase is unnecessary. The existing rule already incorporates all relevant treatment technologies.

COMMENT 15: EPA suggested, as a recommendation only, that the Board replace the proposed language in ARM 17.38.215(3), which concerns bacteriological quality samples, with the following language: "40 CFR 141.21(a)(2) is not adopted, except for the Table in 141.21(a)(2)."

RESPONSE: The Board does not believe that this clarification is necessary, because the proposed language adequately

indicated that the table, but not the rest of the subsection, was being adopted.

COMMENT 16: EPA commented that it is not necessary to adopt 40 CFR 141.62(a) because this is only a reserved subsection.

RESPONSE: The Board agrees and has deleted the reference to this subsection in ARM 17.38.203(1).

COMMENT 17: EPA commented that it is not necessary to adopt 40 CFR 141.60 because the effective dates in that section have already passed.

RESPONSE: The Board agrees and has deleted the reference to this subsection in ARM 17.38.204(1) and 17.38.203.

COMMENT 18: EPA stated that the language in ARM 17.38.205(1)(b)(ii) is confusing.

RESPONSE: This is existing language that allows a surface water supplier to avoid being charged with a monthly turbidity violation resulting from an individual filter if the supplier takes that filter out of service within 24 hours after the turbidity standard has been exceeded. The exceedance does not count toward the 5 percent of measurements that may exceed the turbidity standard only if the offending filter is removed after the first exceedance in a month; later exceedances by the same filter would count toward the 5 percent limit. The Board intends that an exceedance not be counted to contribute to a violation if the filter causing the exceedance is removed from service, within 24 hours, to minimize public health risks. Additionally, EPA does not require monitoring of individual filters, so these requirements are more stringent than EPA regulations.

Therefore, the Board has retained the existing language.

COMMENT 19: EPA stated that it is not necessary to adopt 40 CFR 142.20 and 142.21 (review requirements for variances and exemptions) because these are requirements imposed upon the state by EPA. These requirements are not imposed upon public water suppliers.

RESPONSE: The Board agrees and has deleted the reference to these regulations in ARM 17.38.244(1)(b) and (c).

COMMENT 20: An organization that represents rural water systems in Montana requested that the Board not adopt the revised assessment procedure for late payment of public water supply service connection fees. Currently, an additional charge of 1.5% per month is charged for every month that a fee payment is late. The proposed rule changes this to a one-time 10% late fee.

RESPONSE: Service connection fees are due on March 1 of each year. The Department sends fee statements to public water suppliers in late summer, and again in January or February. Because statements are sent well in advance of the due date, the Board believes that public water supplies have adequate advance notice to allow them to submit fee payments before the due date and to thus avoid additional charges for late payment. Also, the current method of late charge assessment does little to encourage a timely payment. For example, 1.5% of the $50 fee for transient systems is 75 cents. Increasing the additional late charge to 10% will provide more of an incentive to pay the fee on time. Also, the current method of calculating late charges is very cumbersome for program staff, who are required to spend much time in assessing very small penalty amounts.

Therefore, the Board has retained the additional late charge as proposed.

7. In addition to the revisions discussed above, the Board has amended New Rule I to add a subsection (1)(c) to clarify that every reference in the rules to a federal regulation that has been modified with Montana-specific language when being adopted into these rules is a reference to the federal regulation as modified by the Montana rule. The Board has amended ARM 17.38.216(3)(g) to change an incorrect citation from 40 CFR 141.28 to the correct citation of 40 CFR 141.29; ARM 17.38.216(5) to correct editing errors in the proposed amendments; and ARM 17.38.239(1) to delete text that was in the existing rule but that was meant to be deleted in the proposed amendments. The text deleted is duplicated by text found in the federal regulations adopted and incorporated by reference.

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State November 27, 2000.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of repeal of ARM 32.2.201 through 32.2.220 and the adoption of New Rules I through XXVI as they relate to the Montana Environmental Policy Act	)	NOTICE OF REPEAL AND ADOPTION

TO: All Concerned Persons

1. On October 5, 2000, the board of livestock published notice of proposed repeal of ARM 32.2.201 through 32.2.220 and the adoption of new RULES I through XXVI as they relate to the department's compliance with MEPA, at page 2578 of the 2000 Montana Administrative Register, Issue Number 19.

2. The department has repealed ARM 32.2.201 through 32.2.220 exactly as proposed.

3. The department has adopted new RULES I through XXVI exactly as proposed. The new rule numbers will be as follows:

RULE I: ARM 32.2.221
RULE II: ARM 32.2.222
RULE III: ARM 32.2.223
RULE IV: ARM 32.2.224
RULE V: ARM 32.2.225
RULE VI: ARM 32.2.226
RULE VII: ARM 32.2.227
RULE VIII: ARM 32.2.228
RULE IX: ARM 32.2.229
RULE X: ARM 32.2.230
RULE XI: ARM 32.2.231
RULE XII: ARM 32.2.232
RULE XIII: ARM 32.2.233
RULE XIV: ARM 32.2.234
RULE XV: ARM 32.2.235
RULE XVI: ARM 32.2.236
RULE XVII: ARM 32.2.237
RULE XVIII: ARM 32.2.238
RULE XIX: ARM 32.2.239
RULE XX: ARM 32.2.240
RULE XXI: ARM 32.2.241
RULE XXII: ARM 32.2.242
RULE XXIII: ARM 32.2.243
RULE XXIV: ARM 32.2.244
RULE XXV: ARM 32.2.245
RULE XXVI: ARM 32.2.246

AUTH: 2-4-201, MCA
IMP: 2-4-201, 75-1-201, MCA

4. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Bernard A. Jacobs
Bernard A. Jacobs, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State November 27, 2000.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of amendment of ARM 32.2.401 as it relates to fees charged to record, transfer, or rerecord new or existing brands or to provide certified copies of recorded brands and adoption of Rule I as it relates to fees charged by the Montana Department of Livestock Veterinary Diagnostic Laboratory	)	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On October 26, 2000, the board of livestock published notice of proposed amendment to ARM 32.2.401 as it relates to fees charged to record, transfer, or rerecord new or existing brands or to provide certified copies of recorded brands, and adoption of new RULE I as it relates to fees charged by the Montana department of livestock veterinary diagnostic laboratory, at page 2869 of the 2000 Montana Administrative Register, Issue Number 20.

2. The board has amended ARM 32.2.401 exactly as proposed.

3. The board has adopted new RULE I, ARM 32.2.403, exactly as proposed.

4. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Bernard A. Jacobs
Bernard A. Jacobs, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State November 27, 2000.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of amendment of ARM 32.5.101 through 32.5.104, and adoption of Rule I as they relate to laboratory services	)	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On October 26, 2000, the board of livestock published notice of proposed amendment to ARM 32.5.101 through 32.5.104 and the adoption of new RULE I, as they relate to laboratory services, at page 2883 of the 2000 Montana Administrative Register, Issue Number 20.

2. The board has amended ARM 32.5.101 through 32.5.104 exactly as proposed.

3. The board has adopted new RULE I, ARM 32.5.105 exactly as proposed.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

4. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Bernard A. Jacobs
Bernard A. Jacobs, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State November 27, 2000.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of amendment of ARM 32.24.301 regarding the pricing of producer milk; and the adoption of new rules I and II, and the amendment of ARM 32.24.520 and ARM 32.24.523 as they relate to utilization, procedures to purchase and marketing of surplus milk	)	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On October 26, 2000, the board of milk control published notice of proposed amendment to ARM 32.24.301 which relates to the pricing of producer milk; and the adoption of new rules I and II and the amendment of ARM 32.24.523 as they relate to utilization of surplus milk, and procedures to purchase and market surplus milk; and to amend ARM 32.24.520 as it relates to definitions for the utilization of surplus milk, and procedures to purchase and market surplus milk, at page 2878 of the 2000 Montana Administrative Register, Issue Number 20.

2. The board has amended ARM 32.24.301, ARM 32.24.520, and ARM 32.24.523 exactly as proposed.

3. The board has adopted new RULE I, ARM 32.24.524, and adopted new RULE II, ARM 32.24.525, exactly as proposed.

AUTH: 81-23-104, MCA
IMP: 81-23-103, MCA

4. No comments or testimony were received.

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Bernard A. Jacobs
Bernard A. Jacobs, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State November 27, 2000.

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

In the matter of the transfer of ARM Title 46, Chapter 18 pertaining to families achieving independence in Montana (FAIM)	)	NOTICE OF TRANSFER

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, families achieving independence in Montana (FAIM) is transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services. In order to implement that legislation, the above-stated rules are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 78.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

OLD	NEW	
46.18.101	37.78.101	FAIM Financial Assistance: Purpose
46.18.102	37.78.102	FAIM Financial Assistance: Federal Regulations Adopted by Reference
46.18.103	37.78.103	FAIM Financial Assistance: Definitions
46.18.105	37.78.430	FAIM Financial Assistance: Underpayments and Overpayments
46.18.106	37.78.505	FAIM: Financial Assistance, Intentional Program Violation and Disqualification Hearings
46.18.107	37.78.201	FAIM Financial Assistance: FAIM Programs and Time Limits
46.18.108	37.78.202	FAIM Financial Assistance: Exemptions to Time Limits
46.18.109	37.78.206	FAIM Financial Assistance: General Eligibility Requirements
46.18.112	37.78.207	FAIM Financial Assistance: Living with a Specified Relative
46.18.113	37.78.208	FAIM Financial Assistance: Inclusion in Assistance Unit
46.18.114	37.78.215	FAIM Financial Assistance: Child Support Enforcement Cooperation Requirements
46.18.118	37.78.401	FAIM Financial Assistance: Resources
46.18.119	37.78.402	FAIM Financial Assistance: Treatment of Income

OLD	NEW	
46.18.120	37.78.406	FAIM Financial Assistance: Income Disregards and Income Deeming
46.18.121	37.78.407	FAIM Financial Assistance: Limits on Disregards
46.18.122	37.78.420	FAIM Financial Assistance: Assistance Standards; Tables; Methods of Computing Amount of Monthly Benefit Payment
46.18.124	37.78.421	FAIM Financial Assistance: Lump Sum Payments
46.18.125	37.78.415	FAIM Financial Assistance: Excluded Earned Income
46.18.126	37.78.416	FAIM Financial Assistance: Excluded Unearned Income
46.18.128	37.78.423	FAIM Financial Assistance: Protective Payments
46.18.129	37.78.424	FAIM Financial Assistance: Restrictions on Assistance Payments
46.18.130	37.78.425	FAIM Financial Assistance: One Time Employment-Related Payment
46.18.133	37.78.216	FAIM Financial Assistance: Family Investment Agreement
46.18.134	37.78.506	FAIM Financial Assistance: Sanctions
46.18.135	37.78.507	FAIM: Reporting Requirements
46.18.136	37.78.508	FAIM Financial Assistance: Good Cause
46.18.140	37.78.220	FAIM Financial Assistance: Eligibility, Citizenship Requirements
46.18.141	37.78.221	FAIM Financial Assistance: Residency
46.18.142	37.78.222	FAIM Financial Assistance: Denial of Benefits to Strikers
46.18.143	37.78.226	FAIM Financial Assistance: Place of Application ~~and First Assistance Payment~~
46.18.144	37.78.227	FAIM Financial Assistance: Investigation of Eligibility
46.18.145	37.78.228	FAIM Financial Assistance: Initial Payment and Redetermination of Eligibility
46.18.146	37.78.106	FAIM Financial Assistance: Safeguarding and Sharing Information
46.18.149	37.78.601	Emergency Assistance
46.18.150	37.78.602	Emergency Assistance Procedures Followed in Determining Eligibility
46.18.151	37.78.606	FAIM Financial Assistance: Needy Pregnant Woman
46.18.301	37.78.801	FAIM Employment and Training: Purpose

OLD	NEW	
46.18.305	37.78.806	FAIM Employment and Training: Participation
46.18.306	37.78.807	FAIM Employment and Training Activities
46.18.309	37.78.810	FAIM Employment and Training: Work Experience Program (WEX)
46.18.310	37.78.811	FAIM Employment and Training: Participation Requirements for Educational Activities
46.18.315	37.78.817	FAIM Employment and Training: Two-Parent Families Participation and Other Requirements
46.18.318	37.78.825	FAIM Employment and Training: Post-Secondary Participation Criteria
46.18.319	37.78.826	FAIM Employment and Training: Requirements for Satisfactory Progress in Educational, Work and Training Activities
46.18.322	37.78.830	FAIM Employment and Training: Job Search
46.18.323	37.78.831	FAIM Employment and Training: On-the-Job Training (OJT)
46.18.326	37.78.832	FAIM Employment and Training: Supportive Services
46.18.330	37.78.836	FAIM Employment and Training: Good Cause
46.18.331	37.78.837	FAIM Employment and Training: Sanctions
46.18.332	37.78.838	FAIM Employment and Training: Fair Hearing Procedure
46.18.401	37.78.1001	FAIM Food Stamp Program: Purpose
46.18.402	37.78.1002	FAIM Food Stamp Program: Definitions
46.18.405	37.78.1005	FAIM Food Stamp Program: Determining Eligibility and Benefit Amount
46.18.406	37.78.1006	FAIM Food Stamp Program: Reporting and Verification Requirements
46.18.410	37.78.1010	FAIM Food Stamp Program: Standard Utility Allowance
46.18.411	37.78.1011	FAIM Food Stamp Program: Resources
46.18.412	37.78.1012	FAIM Food Stamp Program: Dependent Care Deduction
46.18.413	37.78.1013	FAIM Food Stamp Program: Unearned Income Exclusions
46.18.414	37.78.1014	FAIM Food Stamp Program: Employment-Related Payments

3. The transfer of rules is necessary because this program was transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and

Human Services by the 1995 legislature by Chapter 546, Laws of Montana 1995.

/s/ Dawn Sliva	/s/ Laurie Ekanger
Rule Reviewer	Director, Public Health and Human Services

Certified to the Secretary of State November 27, 2000.

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

In the matter of the amendment of ARM 46.20.106 pertaining to mental health services plan eligibility	))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On September 21, 2000, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 2510 of the 2000 Montana Administrative Register, issue number 18.

2. The Department has amended rule 46.20.106 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 November 27, 2000.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.419 regarding scheduled dates for the Montana Administrative Register	)	NOTICE OF AMENDMENT OF ARM 1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION OF THE MONTANA ADMINISTRATIVE REGISTER

TO: All Concerned Persons

1. On October 26, 2000, the Secretary of State published notice of the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register for the year 2001 at page 2959 of the 2000 Montana Administrative Register, Issue No. 20.

2. The Secretary of State has amended ARM 1.2.419 as proposed.

3. No comments or testimony were received.

/s/ Mike Cooney
MIKE COONEY
Secretary of State

/s/ LesLee Shell-Beckert
LESLEE SHELL-BECKERT
Rule Reviewer

Dated this 27th day of November 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 September 30, 2000. This table includes those rules adopted during the period October 1, 2000 through December 31, 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 September 30, 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.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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