

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of rules pertaining) ON THE PROPOSED AMENDMENT
to applicants registered in) OF ARM 8.6.405 LICENSURE OF
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) NEW RULE III EMERGENCY USE
) OF ARCHITECTS, AND NEW RULE
) IV APPLICATION FOR
) LICENSURE BY EXAMINATION

TO: All Concerned Persons

1. On June 20, 2000, at 10:00 a.m., a public hearing will be held in the conference room, Lower Level, Arcade Building, 111 N. Jackson, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on June 13, 2000 to advise us of the nature of the accommodation that you need. Please contact Sharon McCullough, Board of Architects, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3745; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

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

8.6.405 LICENSURE OF OUT-OF-STATE APPLICANTS WHO ARE REGISTERED IN ANOTHER STATE (1) and (2) will remain the same.

(3) All out-of-state applicants who are registered in another state and who were licensed in their respective jurisdiction prior to January 1, 1966, shall submit evidence of having successfully completed an NCARB-approved ~~seminar on seismic forces or have taken and passed Division E, Structural Lateral Forces of the Architectural Registration Examination.~~ An out-of-state candidate seismic exam or other board approved component. An applicant who is registered in another state and who meets all requirements except the seismic force exam,

must successfully complete only that exam to satisfy licensure requirements.

Auth: Sec. 37-1-131, 37-65-204, MCA
IMP: Sec. 37-65-304, MCA

REASON: The Board is proposing this amendment to better define the application process for out-of-state applicants.

8.6.406 QUALIFICATIONS REQUIRED FOR MONTANA BRANCH OFFICE (1) No firm, corporation, partnership or individual may establish or maintain within this state, a branch office to engage in the practice of architecture unless such branch office is under the responsible control and direction of a Montana licensed resident architect who is in the branch office a majority of the time the office is open.

Auth: Sec. 37-1-131, 37-65-204, 37-65-303, MCA
IMP: Sec. 37-65-303, 37-65-305, MCA

REASON: The Board is proposing this amendment to include the word "responsible" to help define the amount of control needed to operate a branch office in the state. The definition of "responsible control" is being added in New Rule I Definitions.

8.6.407 EXAMINATION (1) ~~An examination prescribed by the board must be taken, but only after the applicant has met the prerequisites and has been approved by the board for admission to the examination. Applicants for examination are required to file an application with the board. Application forms will be supplied by the board office. Licensure may be granted to an applicant who has successfully passed the architectural registration examination (ARE). To be admitted to the national architectural examination, an applicant shall have completed national council of architectural registration boards (NCARB) education and training requirements and have obtained a council record.~~

(2) ~~The qualifications for admission to the architectural registration examination (ARE) are as follows: All eligibility requirements shall have been verified by the council record and have been satisfied in accordance with the NCARB handbook for interns and architects. The handbook is available through the National Council of Architectural Registration Boards, 1735 New York Avenue, N.W., Washington, D.C. 20006 or the Montana board of architects and is adopted and incorporated herein by reference.~~

(a) (3) The applicant ~~must~~ shall satisfy one of the following educational requirements:

(i) ~~(a) Hold a bachelor of architecture degree in architecture~~ from a school of architecture, the degree curriculum of which was accredited by the national architectural accrediting board (NAAB) not later than two years after graduation; or

~~(ii) (b) Meet the alternate education criteria outlined in the national council of architectural registration boards (NCARB) education standards. The handbook is available through the National Council of Architectural Registration Boards, 1735 New York Avenue, N.W., Washington, D.C. 20006, or the Montana board of architects.~~

~~(3) All examination applicants must complete the national council of architectural registration board's (NCARB) intern development program (IDP) for admission to the licensing examination. The applicant shall request NCARB transmit a complete copy of the applicant's IDP record to the Montana board. Upon receipt of an examination application and the IDP record, the Montana board will make a decision on granting the applicant admission to the licensing examination.~~

~~(4) The exam candidate must successfully pass all sections of the national architectural registration examination and request submittal to the board of all exam scores for every section of the national exam taken.~~

~~(a) (5) Out-of-state All applicants who are registered in another state and who meet all the requirements of ARM 8.6.405 except the seismic force exam may take only that exam, and must achieve a passing score to satisfy licensure requirements.~~

~~(4) (6) Examination materials prepared by the board and examinations submitted by applicants records, pursuant to the requirements of this chapter, shall be confidential and shall not be considered public records. Nothing herein shall prevent the board from reporting applicants' scores to architectural registration boards in other jurisdictions or to NCARB.~~

~~(5) (7) An applicant failing to pass the examination is entitled to re-examination on divisions of the examination that the applicant failed to pass. If the entire examination is not successfully completed within four consecutive years, beginning on the eligibility date, the applicant must reapply and retake the entire examination, unless the board, in its sole discretion, provides an exception to the applicant. Such exceptions shall be provided only upon proof of medical hardship or other extraordinary circumstances.~~

Auth: Sec. 37-1-131, 37-65-204, 37-65-303, MCA
IMP: Sec. 37-1-131, 37-65-204, 37-65-303, MCA

REASON: The Board is proposing this amendment to allow exam candidates a faster and smoother process for the required examinations and to update the language for the national examination.

8.6.409 INDIVIDUAL SEAL (1) Every licensed architect shall have a seal, ~~the impression of~~ which must contain the name of the architect, the city and state of the architect's place of business, the architect's Montana license number and the words "LICENSED ARCHITECT, STATE OF MONTANA", ~~with which the architect shall stamp and sign all drawings and~~

~~specifications issued from the architect's office for use in this state.~~

~~(2) When there is a partnership or other business entity of architects, the individual names and license numbers of members may appear on one seal. All drawings and specifications technical submissions prepared by an architect shall be stamped and signed with the architect's seal or the seal of the firm. The permit set must bear the architect's original signature.~~

Auth: Sec. 37-1-131, 37-65-204, 37-65-308, MCA
IMP: Sec. 37-1-131, 37-65-204, 37-65-308 MCA

REASON: The Board is proposing this amendment to better define the requirements for what needs to be on an architect's seal and when it must be used.

8.6.412 UNPROFESSIONAL CONDUCT (1) and (1)(a) will remain the same.

(b) practicing beyond the scope of practice knowledge and expertise of the profession licensee as defined by law;

(c) failing to supervise the work of another whereby the supervisor has both responsible control over and detailed professional knowledge of the work prepared under the supervisor's supervision;

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

Auth: Sec. 37-1-131, 37-1-319, 37-65-204, MCA
IMP: Sec. 37-1-131, 37-1-319, 37-65-204, MCA

REASON: The Board is proposing this amendment to better define language already in the rule.

8.6.413 FEE SCHEDULE (1) ~~Examination fee set by NCARB (payable to testing service upon approval of application):~~

(a) pre-design	_____	\$ 92
(b) site planning	_____	129
(c) building planning	_____	155
(d) building technology	_____	145
(e) general structures	_____	108
(f) lateral forces	_____	79
(g) mechanical and electrical	_____	83
(h) material and methods	_____	90
(i) construction documents and services	_____	99
(j) total, all nine divisions	_____	980
(2) Out-of-state application	_____	100
<u>(1) Application fee for applicants registered in another state or jurisdiction</u>	<u>_____</u>	<u>\$100</u>
(3) and (4) will remain the same but be renumbered (2) and (3).		
(5) (4) Original license fee, if licensed in an even year	_____	40 80
<u>(5) Original license fee, if licensed in odd year</u>	<u>_____</u>	<u>40</u>

(6) through (8) will remain the same.

Auth: Sec. 37-1-134, 37-65-204, 37-65-307, MCA
IMP: Sec. 37-1-134, 37-65-201, 37-65-304, 37-65-306,
37-65-307, MCA

REASON: The proposed amendments to this rule do not increase or decrease fees to applicants or licensees. The board is deleting (1) because the architect examination is now a national examination and exam fees are collected by the testing agency. Subsection (2) is being renumbered and reworded for clarification purposes. Subsections (4) and (5) are being revised to provide that an applicant applying for licensure in the first year of the biennium (which is two years) will pay \$40.00 for each year (total \$80.00). An applicant applying for licensure in the second year of the biennium will pay \$40.00. This change is required because of the Board's change to biennial renewals.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS (1) "Responsible control" means the amount of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects applying the required professional "standard of care."

(2) "Technical submissions" means the drawing, specifications, studies and other technical reports prepared in the course of practicing architecture.

Auth: Sec. 37-65-101, 37-65-102, 37-65-204, MCA
IMP: Sec. 37-65-204, MCA

REASON: The board is proposing this rule to define the appropriate control that is required to meet a standard of care for the profession and to define what is meant by "technical submissions."

NEW RULE II BUSINESS ENTITY PRACTICE (1) When there is a partnership or other business entity of architects, the individual names and license numbers may appear on one seal.

(2) Nothing shall prevent a partnership (including a registered limited liability partnership), limited liability company or corporation (including a professional corporation) from performing or holding itself out as able to perform any of the services involved in the practice of architecture; provided, that two-thirds of the general partners (if a partnership), two-thirds of the managers (if a limited liability company), or two-thirds of the directors (if a corporation) are registered under the laws of any United States jurisdiction as architects or engineers and that one-third are registered as architects in Montana.

Auth: Sec. 37-65-101, 37-65,102, 37-65-204, MCA
IMP: Sec. 37-1-303, 37-65-101, 37-65-204, MCA

REASON: The board is proposing this rule to define the parameters for business entity practice for architects.

NEW RULE III EMERGENCY USE OF ARCHITECTS (1) Nothing shall prevent a person who is not currently registered in this state and is currently registered in another United States or Canadian jurisdiction, from providing uncompensated (other than reimbursement of expenses) professional services at the scene of an emergency at the request of a public officer, public safety officer, or municipal or county building inspector, acting in an official capacity. "Emergency" shall mean earthquake, eruption, flood, storm, hurricane, or other catastrophe that has been designated as a major disaster or emergency by the president of the United States or governor or other duly authorized official of the state.

Auth: Sec. 37-65-101, 37-65-102, 37-65-204, MCA
IMP: Sec. 37-65-101, 37-65-204, MCA

REASON: The board is proposing this rule to allow out-of-state architects to work in Montana during a natural disaster.

NEW RULE IV LICENSURE OF APPLICANTS BY EXAMINATION (1) An applicant may apply for licensure by examination by taking and passing the national architectural registration examination.

(2) The applicant will submit an application on board approved forms to the board office for consideration of licensure.

(3) The applicant must verify the passage of all sections of the national architectural registration examination by submitting the examination scores from the applicant's designated state.

(4) The applicant must meet all the requirements set forth in ARM 8.6.407(1) through (4), (6) and (7).

(5) The applicant shall pay the appropriate licensure fee.

Auth: Sec. 37-65-204, 37-65-303, MCA
IMP: Sec. 37-65-301, 37-65-303, MCA

REASON: The board is proposing this rule because the processes and procedures for taking the examination have changed. This has resulted in amendments to 8.6.407 and requires additional clarification for applicants applying for licensure through the examination process.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Architects, 111 North Jackson, P.O. Box 200513, Helena,

Montana 59620-0513, or by facsimile, number (406) 444-1667, and must be received no later than 5:00 p.m., June 22, 2000.

6. Edward L. Myers, III, attorney, has been designated to preside over and conduct this hearing.

7. The Board of Architects maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request to the board. Such request shall include the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Architects administrative rulemaking or other administrative proceedings. Such written request may be mailed or delivered to the Board of Architects, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 444-1667 or may be made by completing a request form at any rules hearing held by the Board of Architects.

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

BOARD OF ARCHITECTS
GENE VOGL, 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, May 15, 2000

BEFORE THE WEIGHTS AND MEASURES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of rules pertaining) ON THE PROPOSED AMENDMENT
to the Weights and Measures) OF RULES PERTAINING TO THE
Bureau) WEIGHTS AND MEASURES BUREAU

TO: All Concerned Persons

1. On June 23, 2000 at 10:00 a.m. the Montana Department of Commerce, Weights and Measures Bureau will hold a public hearing in the upstairs conference room, at the Department of Commerce building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendments of ARM 8.77.105 and 8.77.107.

2. The bureau will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the bureau no later than 5:00 p.m. on June 14, 2000, to advise us of the nature of the accommodation that you need. Please contact Jack Kane, Department of Commerce, Weights and Measures Bureau, 1424 Ninth Avenue, P.O. Box 200512, Helena, MT 59620-0512; telephone (406)444-3934; Montana Relay 1-800-253-4091; TDD (406)444-2978; facsimile (406)444-4305. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Jack Kane.

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

8.77.105 WEIGHING DEVICE LICENSE TRANSFER (1) For all licenses administered by the one-stop licensing program, device license transfer is subject to the requirements established in 30-16-302, MCA. For all other licenses administered by the weights and measures bureau, the following shall apply:

~~(1)~~ (a) If ownership of a weighing device changes and the device remains at the same location, the license will transfer to the new owner and remain in effect until December 31 of that year.

~~(2)~~ (b) If ownership of a weighing device changes and the device is moved to a new location, the new owner will be required to apply for a new license which will expire on December 31 of that year.

Auth: Sec. 30-12-202, MCA; IMP: Sec. 30-12-203, MCA

REASON: Beginning in January 1999, the Department of Revenue's One-Stop Licensing program took over the licensing functions for a number of state agencies, including the Weights and Measures Bureau. However, rules and statutes pertaining to the transfer of ownership are still in place from when the licensing function was handled by Weights and

Measures. By making the above changes, Weights and Measures rules concerning weighing devices still administered by the Weights and Measures Bureau will remain the same and also will be consistent with the proposed changes to Weights and Measures statutes pertaining to the transfer of ownership of meter licenses.

The Weights and Measures Bureau estimates that the cumulative amount of the proposed increase in fees to all persons will be \$35,000. The Weights and Measures Bureau estimates that approximately 1,500 people will be affected by the increase in fees.

8.77.107 LICENSE FEE SCHEDULE FOR WEIGHING AND MEASURING DEVICES (1) Measuring device fees will be as follows:

(a) each gasoline ~~pump meter~~, diesel ~~pump meter~~, compressed natural gas dispenser or fuel oil ~~pump meter~~ with a listed maximum delivery rate of 20 or less gpm shall be ~~\$1416~~ per meter;

(b) each petroleum vehicle tank meter or stationary petroleum meter with a maximum listed delivery rate of between 130 gpm and 20 gpm shall be ~~\$5055~~ per meter;

(c) each petroleum vehicle tank meter or stationary petroleum meter with a maximum listed delivery of over 130 gpm shall be ~~\$6065~~ per meter;

(d) each liquefied petroleum liquid meter ~~\$7580~~;

(e) through (2) will remain the same.

Auth: Sec. 82-15-102, MCA; IMP, Sec. 82-15-105, MCA

REASON: The Weights and Measures Bureau is funded by a special revenue account and such funds come entirely from license fees that are required of all commercial weighing and measuring devices. The purpose of the proposed rule change is to increase these fees to a level that will properly fund the bureau and enable it to carry out its statutorily mandated functions. Legislation has been proposed that would increase the license fees for scales, which are in statute, by a similar amount.

At the present time, the Bureau's income to expenses is less than a 1:1 ratio. In FY99, the program had a net revenue of \$588.88 and in FY00, it is anticipated that the net revenue will be short approximately \$20,000. Increasing costs including indirect increases in personnel services, normal operating expenses such as travel, fuel, repair expenses and the addition of an annual charge of \$12,600 from the One-Stop Licensing program to administer licensees, will in all probability deplete the program's fund balance of \$88,000 within the coming biennium. The reason for changing "pump" to "meter" is to more accurately reflect what the Bureau is testing and to be more consistent in the terminology.

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

Department of Commerce, Weights and Measures Bureau, 1424 Ninth Avenue, P.O. Box 200512, Helena, MT 59620-0512, or by facsimile number (406)444-4305, to be received no later than 5:00 p.m., June 22, 2000.

5. Peter Ohman has been designated to preside over and conduct this hearing.

6. The Weights and Measures Bureau maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Bureau. 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 Weights and Measures Bureau's administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Weights and Measures Bureau, 1424 Ninth Avenue, P.O. Box 200512, Helena, MT 59620-0512 or by telephone at (406)444-3934, or may be made by completing a request form at any rules hearing held by the agency.

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

WEIGHTS AND MEASURES BUREAU
JACK KANE, BUREAU CHIEF

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

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

Certified to the Secretary of State, May 15, 2000.

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

In the matter of the amendment) NOTICE OF
of ARM 17.58.311 pertaining to) PROPOSED AMENDMENT
definitions)
)
) (PETROLEUM BOARD)

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On June 26, 2000, the Petroleum Tank Release Compensation Board proposes to amend ARM 17.58.311.

2. The Board will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., June 19, 2000, to advise us of the nature of the accommodation you need. Please contact the Board at 2209 Phoenix Ave., P.O. Box 200902, Helena, Montana 59620-0902; phone (406) 444-0928 or 800-556-5291; fax (406) 444-1902.

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

17.58.311 DEFINITIONS Unless the context clearly indicates otherwise, the following definitions, in addition to those in 75-11-302, MCA, apply throughout this chapter:

(1) through (19) remain the same.

(20) "Tank" is a petroleum storage tank as defined in 75-11-302, MCA, and is further defined to mean a stationary device designed to contain an accumulation of petroleum or petroleum products and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

(21) remains the same.

AUTH: 75-11-318, MCA

IMP: 75-11-302 through 75-11-318, MCA

4. The proposed amendment is necessary to correct an inadvertent error made in the last rulemaking done by the Petroleum Tank Release Compensation Board. In MAR Notice 17-099, 1999 Issue No. 13, the Board mistakenly deleted part of the existing definition of the word "tank." In retrospect, this was an error as the former definition correctly reflected the underlying statutes (Title 75, Chapter 11, part 3, MCA) and does not include more than is necessary to properly define the term "tank" for the purposes of the statutes. As presently defined the term "tank" could be construed as not

including all the lines and other parts of an underground storage tank system. Amending the rule so that "tank" is also defined as a "petroleum storage tank" will eliminate any confusion or misinterpretation.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, no later than June 22, 2000. To be guaranteed consideration, the comments must be postmarked on or before that date.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901. A written request for hearing must be received no later than June 22, 2000.

7. If the Petroleum Tank Release Compensation Board 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 78 persons based on the 778 owners of currently in-use petroleum storage tanks in Montana.

8. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive rulemaking notices. Such written request may be mailed or delivered to the Petroleum Tank Release Compensation Board, 2209 Phoenix Ave., P.O. Box 200902, Helena, Montana 59620-0902, faxed to the office at (406) 444-1902, or may be made by completing a request form at any rules hearing held by the Board.

PETROLEUM TANK RELEASE COMPENSATION BOARD

by: Tim Hornbacher
TIM HORNBACHER, Chair

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State May 15, 2000.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON
of ARM 17.38.606 pertaining to) PROPOSED AMENDMENT
administrative penalties)
) (PUBLIC WATER SUPPLY)

TO: All Concerned Persons

1. On June 14, 2000 at 10:00 a.m. in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a hearing to consider the proposed amendment of the above-captioned 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., June 7, 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 to be amended provides as follows. Text of present rule with matter to be stricken interlined and new matter underlined.

17.38.606 ADMINISTRATIVE PENALTIES (1) ~~Any imposition of penalties under this subchapter becomes effective upon issuance of a final order and due according to a schedule established in the order. If a person submits compelling financial evidence, the department may, prior to issuing an NOV and order, incorporate into an order a reasonable payment schedule, taking into consideration the person's ability to pay and allowing consecutive monthly payments for a penalty assessed pursuant to this rule. The department may charge an additional amount in interest for funds owed to the state of Montana at the interest rate established by the Montana department of revenue~~

(2) Penalties imposed against any person under this subchapter will be assessed according to the seriousness of the violation, the culpability of the person, the size of the system, the duration of the violation, the economic benefit of noncompliance, and the occurrence of the same or similar violation within a 12 month period, as follows: The minimum daily administrative penalties for listed violations are set forth in Table I. To determine the total amount of the penalty to be assessed for a violation, the department shall adjust the minimum daily administrative penalty for the violation from Table I by the amounts calculated in (2). That amount must then be multiplied by the number of days of violation that has been charged by the department. To that amount the department shall add the amount of economic benefit

calculated in (3). The amount that results is the total penalty amount. The total penalty amount, when divided by the number of days of violation charged, may not exceed \$1,000 for a public water system, other than a water hauler or a water bottling plant, that serves a population of more than 10,000, and \$500 for other violations.

~~(a) Penalty amounts assessed against any person for all violations, including but not limited to those listed in (b) below, may not exceed \$500 for each day a violation occurred or continues to occur beyond the date specified for correction in the order.~~

~~(b) Penalty amounts for the following list of violations may not be less than the amounts specified in Table I below and may be adjusted upward according to the criteria in (2) above for the following list of violations:~~

See next page for Table I

Table I

Schedule of Minimum Administrative Penalties for Violations of the Public Water Supply Act.
Penalty amounts in US Dollars

VIOLATION	S1 (\$)	S2 (\$)	S3 (\$)
Acute MCL Violations	25/day	100/day	200/day
FAILURE TO PROVIDE PUBLIC NOTIFICATION FOR:			
(a) acute MCL violations	60/violation plus 60/day	240/violation plus 240/day	480/violation plus 480/day
(b) non-acute MCL violations	45/violation plus 30/day	180/violation plus 120/day	360/violation plus 240/day
(c) treatment technique violations	45/violation plus 30/day	180 violation plus 120/day	360/violation plus 240/day
(d) monitoring or reporting violations	40/violation plus 20/day	160/violation plus 80/day	320/violation plus 160/day
(e) AO, court order or consent order	40/violation plus 20/day	160/violation plus 80/day	320/violation plus 160/day
FAILURE TO USE A CERTIFIED OPERATOR	60/violation plus 20/day	240/violation plus 80/day	480/violation plus 160/day
FAILURE TO SELF MONITOR FOR:			
(a) nephelometric turbidity units daily	10/day	40/day	80/day
(b) disinfectant residuals daily	10/day	40/day	80/day
(c) fluoride levels daily	10/day	40/day	80/day
FAILURE TO SAMPLE FOR:			
(a) coliform bacteria	75/sample + 25/day/sample	75/sample + 25/day/sample	75/sample + 25/day/sample
(b) nitrate or nitrite (each)	75/sample + 25/day/sample	75/sample + 25/day/sample	75/sample + 25/day/sample
FAILURE TO PAY ANNUAL FEE AS REQUIRED IN ARM 17.38.248	5/day	20/day	40/day
FAILURE TO MAINTAIN REQUIRED DISTRIBUTION SYSTEM DISINFECTANT RESIDUAL DAILY	25/day	100/day	200/day

S1: Public water system serving 1-100 service connections

S2: Public water system serving 101-1000 service connections

S3: Public water system serving 1001 or more service connections

Table I
 Schedule of Minimum Daily Administrative Penalties
 for Violations of the Public Water Supply Laws & Rules

Type of Violation	Penalty per day (\$)			
	S1	S2	S3	S4
Violations That Affect Human Health				
Acute MCL violation	\$85	\$170	\$340	\$680
Failure to monitor or report samples for acute contaminants (includes bacteria, turbidity and/or nitrate)	\$75	\$150	\$300	\$600
Failure to provide public notification of boil order or health advisory	\$65	\$130	\$260	\$520
Failure to provide treatment	\$50	\$100	\$200	\$400
Non-acute MCL violation	\$45	\$90	\$180	\$360
Failure to provide public education or notification (except for notification of boil order or health advisory)	\$40	\$80	\$160	\$320
Failure to monitor or report samples for water quality parameters or non-acute contaminants (other than bacteria, turbidity and nitrate)	\$35	\$70	\$140	\$280
Failure to self-monitor for chlorine, turbidity, or fluoride	\$10	\$20	\$40	\$80
Violations That Affect Program Administration and Integrity				
Failure to pay annual service connection fee	\$2	\$4	\$8	\$25
Failure to comply with an administrative order				
-water supply system	\$100	\$200	\$400	\$800
-sewage system	\$100	\$200	\$400	\$400
Failure to use certified operator	\$5	\$10	\$15	\$30
Construction, modification, or operation of a system without plan approval				
-water supply system	\$100	\$200	\$400	\$800
-sewage system	\$50	\$100	\$200	\$400

- S1: Public system serving ≤ 250 persons
- S2: Public system serving 251 - 2,500 persons
- S3: Public system serving 2,501 - 10,000 persons
- S4: Public system serving >10,000 persons

(c) ~~Whenever, in Table I above, 2 penalties are listed, separated by "plus" or "+", the first amount is the minimum penalty for the violation, and the second amount is the minimum penalty for each day of violation extending beyond the~~

~~date specified for compliance in an order issued by the department.~~

(2) The department shall adjust the minimum daily administrative penalty from Table I by the following factors:

(a) The department shall consider the circumstances of the violation. If a violation has occurred through no negligence on the part of the violator, the minimum daily administrative penalty may not be increased for this penalty component. If a violation involves ordinary negligence, which is the failure to exercise the reasonable care of a person of common prudence, the minimum daily administrative penalty must be increased by up to 10%. If a violation involves gross negligence, which is the gross or reckless disregard for the violated legal requirement, the minimum daily administrative penalty must be increased by up to 15%. If the violation occurred due to intentional conduct, the minimum daily administrative penalty must be increased by up to 25%.

(b) The department shall consider the violator's history of violations. The minimum daily administrative penalty must be increased by 5% for each Class II violation, and 10% for each Class I violation, for which the department issued a warning letter, letter notifying the person of the violation under 75-6-110, MCA, or notice of violation, or successfully prosecuted a judicial action, within the two years prior to the date of the violation for which the penalty is being assessed. The maximum amount by which a minimum daily administrative penalty may be increased for history of violations is 20% of the penalty for the violation from Table I. A violation may not be counted if:

- (i) the notice of violation was vacated; or
- (ii) the notice of violation is subject to a pending administrative action; or
- (iii) the time to request review or appeal of an administrative or judicial decision has not expired.

(c) The department shall consider voluntary mitigation. If the violator takes measures beyond those required by the law to mitigate the violation or the impacts of the violation on human health or the environment, up to 20% of the minimum daily administrative penalty may be deducted.

(3) The department shall determine any economic benefit or savings that the violator gained as a result of the violation. The department shall use the best information reasonably available at the time of calculating the penalty to determine the economic benefit or savings. The dollar value of the economic benefit or savings, if any, must be added to the penalty amount calculated in (1) of this rule to determine the total penalty amount.

(4) If, after the notice of violation and administrative penalty order have been served, the violator wishes to have the department consider its ability to pay, the violator shall provide information concerning its financial situation to the department. The department shall review the information provided and proceed as follows:

(a) If the department determines that the violator is unable to immediately pay the total penalty amount, but that the violator is able to pay on a schedule, the department may place the violator on a payment schedule. The department may charge interest on the unpaid balance at the rate assessed by the Montana department of revenue on income tax due.

(b) If the department determines that the assessed penalty is unfair in light of the violator's ability to pay, it may reduce the penalty. However, the total penalty amount may not be reduced to a value less than the violator's economic benefit resulting from the violation.

AUTH: 75-6-103, MCA

IMP: 75-6-109, MCA

4. The Board is proposing to move the provisions of ARM 17.38.606(1), concerning economic benefit, ability to pay and payment schedules and interest charged on administrative penalties, to (3) and (4). These changes are proposed for better organization and clarity. The Board is also proposing to amend ARM 17.38.606(1) to state that minimum penalties for violation of certain public water supply requirements are as set forth in amended Table I in ARM 17.38.606. The Board proposes to amend the Table by substituting a new Table I. The new Table I has a new fourth column, to implement the requirement of SB 72, Sec. 6, CH. 195, L. 1999, codified in § 75-6-109(6)(a)(i), MCA, which increases the maximum penalty that may be assessed against a water supplier serving more than 10,000 persons to \$1,000 for each day of a violation. This change was made in response to the 1996 Amendments to the Federal Safe Drinking Water Act, which prescribe that a state has the primary enforcement responsibility for public water supplies, provided that the state has adopted authority for administrative penalties. The amendments further prescribe that in the case of a system serving a population of more than 10,000, the maximum penalty amount may not be less than \$1,000 per day per violation. 42 U.S.C. 300g-2(a)(6)(A). The legislature passed SB 72, and the Board is proposing these amendments, to incorporate this federal statutory change into Montana's rules.

The Board is proposing to amend the penalties now listed in Table I because they are incomplete, and in some cases duplicative or excessive. The existing penalty table is incomplete because it does not include all of the common public water supply violations. For example, failure to provide adequate treatment (e.g. filtration, corrosion control) is not included in the table. The existing penalty table is also duplicative. Several penalty amounts are listed for failure to provide public notification. Only one penalty is needed for failure to notify. The proposed amendments update the penalty table by adding new violations and condensing violations into groups.

The Board also believes that some of the penalties in the existing table are unfair because they are excessive in

comparison with the severity of the violation. For example, the existing penalty for failure to pay a \$50 annual fee for 1 year is \$1,825 for a system serving 250 people or fewer. The proposed amendments lower that penalty to \$730.

The Board also proposes to amend ARM 17.38.606(1) to state the department's method for determining the total amount of the penalty to be assessed, which is reached by adjusting the minimum daily administrative penalty amounts from Table I by the amounts obtained in (2) and multiplying that amount by the number of days of violation charged by the department. The amount of the economic benefit received by the violator for failing to comply with the rule or law is then added. The total, when divided by the number of days of violation charged, may not exceed \$1,000 for public water supply systems serving over 10,000 persons, or \$500 for other systems.

The Board is proposing to amend ARM 17.38.606(2) to clarify the adjustments to the minimum daily administrative penalty from Table I that may be made for culpable behavior (up to 10% more for ordinary negligence, up to 15% for gross negligence, and up to 25% for intentional conduct), past violation history (up to 20%), and voluntary mitigation (a deduction of up to 20%). The department is required to consider these factors under §§ 75-6-109(7) and 75-6-114(4), MCA, and the Board believes that the proposed language is clearer and more definite than the existing language. The amounts proposed were chosen among higher and lower alternative levels because they reasonably weight the level of culpability; the penalty should be higher for violations committed with a higher level of culpability.

The Board is proposing to amend ARM 17.38.606(4) to clarify that the department will evaluate ability to pay after a notice of violation and administrative penalty order have been served if a violator submits financial information. Based on the evaluation, the department may allow the violator to pay on a schedule or may reduce the penalty if unfair.

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 June 22, 2000. To be guaranteed consideration, the comments must be postmarked on or before that date.

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

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control;

water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 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, apply and the sponsor has been notified of this proceeding.

BOARD OF ENVIRONMENTAL REVIEW

by: Joe Gerbase
JOE GERBASE, Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State May 15, 2000.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption)	SUPPLEMENTAL NOTICE OF
of a NEW RULE I; and the)	PUBLIC HEARING ON PROPOSED
amendment of ARM 17.8.321)	ADOPTION AND
pertaining to minimum federal)	AMENDMENT
requirements for the use of)	
credible evidence to establish)	
noncompliance in an)	
enforcement action)	(AIR QUALITY)

TO: All Concerned Persons

1. On June 28, 2000 at 10:00 a.m. in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a hearing to consider the proposed adoption and amendment of the above-captioned rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., June 21, 2000, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. 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 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. Several other alternatives have been raised, both by the Board, and through the oral and written comments received by the Board.

With this notice, it is the Board's desire to supplement the previous notice in this matter with five new alternatives, which are set forth below. ALTERNATIVE I remains unchanged, and is restated for convenience. ALTERNATIVE II has been deleted, and ALTERNATIVES IIA and IIB are now proposed in its place. Three additional alternatives (ALTERNATIVES III, IV and V) are also proposed. Paragraphs 5 through 10 of this notice contain rationale statements for each proposed alternative. After hearing public comment on the full slate of alternatives, the Board will decide which, if any, of the proposed alternatives to adopt.

4. The rule proposed to be amended under Alternative I would provide as follows: Text of present rule with matter to be stricken interlined and new matter underlined.

17.8.321 KRAFT PULP MILLS (1) through (14) remain the same.

(15) COMS will be one method of determining the primary measure of compliance with the opacity limits specified in (8), (9), and (10) of this rule, ~~except that 40 CFR Part 60, appendix A, method 9, may be used as a measure of compliance.~~ when If the Department believes COMS data is are not accurate or is are unavailable, 40 CFR Part 60, appendix A, method 9, may be used to determine compliance.

(16) remains the same.

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

5. The proposed alternative new rules provide as follows:

ALTERNATIVE I (from prior Notice)

NEW RULE I CREDIBLE EVIDENCE (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, 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.

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

ALTERNATIVE IIA

NEW RULE I CREDIBLE EVIDENCE (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, 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, 75-2-203, 75-2-217, MCA
IMP: 75-2-203, 75-2-217, MCA

ALTERNATIVE IIB

NEW RULE I CREDIBLE EVIDENCE (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, 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 reference test or compliance demonstration 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 that is clear and convincing.

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

ALTERNATIVE III

NEW RULE I CREDIBLE EVIDENCE (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. The results of the appropriate performance or compliance test procedures or methods shall be entitled to the disputable presumption set forth at 26-1-602(32), MCA, when an appropriate demonstration has been made under that section.

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

ALTERNATIVE IV

NEW RULE I CREDIBLE EVIDENCE (1) Notwithstanding any other provision, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any permit term, applicable regulation, or emission limit.

(2) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at any facility or emitting unit:

(a) a monitoring method approved for the facility or emitting unit pursuant to 40 CFR 70.6(a)(3) and incorporated in a federally enforceable operating permit; or

(b) any federally enforceable compliance methods approved for the facility or emitting unit.

(3) The following testing, monitoring, or information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:

(a) any federally enforceable monitoring or testing methods, including those in 40 CFR Parts 51, 60, 61, and 75; and

(b) other testing, monitoring, or information-gathering methods that produce information comparable to that produced by any method in (2) or (3)(a), above.

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

IMP: 75-2-203, 75-2-217, MCA

ALTERNATIVE V

NEW RULE I CREDIBLE EVIDENCE (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.

(2) If credible evidence or information under (1) demonstrates that a person has violated or is in violation of any standard or limitation, but the most recent performance or compliance test procedure or method indicates that the person is in compliance with the same standard or limitation:

(a) the person shall conduct the performance or compliance test procedure or method, and submit the results to the department within 30 days of the demonstration of violation; and

(b) the person shall not be considered to have violated any standard or limitation unless the performance or compliance test procedure or method conducted under (2)(a) above also demonstrates a violation of the standard or limitation.

(3) The requirements of (2)(a) and (2)(b), above, shall not apply if the violation demonstrated by credible evidence or information under (1) is antecedent to the most recent performance or compliance test procedure or method. In such a case the person shall not be found in violation of any standard or limitation.

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

IMP: 75-2-203, 75-2-217, MCA

6. Statement of reasonable necessity for ALTERNATIVE I:

This alternative is restated verbatim from the prior Notice of Public Hearing on Proposed Adoption and Amendment in this proceeding, dated January 31, 2000, and published at page 250 of the 2000 Montana Administrative Register, issue number 3. In that previous Notice, this alternative appears as Alternative I. The statement of reasonable necessity is set forth in that notice, and is incorporated herein by this reference.

7. Statement of reasonable necessity for ALTERNATIVE IIA:

This alternative is a variation of Alternative II, originally set forth in the prior Notice of Public Hearing on Proposed Adoption and Amendment in this proceeding, published at page 250 of the 2000 Montana Administrative Register, issue number 3.

The statement of reasonable necessity set forth in that previous Notice for Alternative II is incorporated herein by this reference, and is supplemented with the following statement.

This alternative contains two significant changes to the original Alternative II. First, in the original Alternative II, there is a presumption of continuing compliance if compliance is demonstrated by an appropriate test or procedure. In this Alternative IIA, this presumption is made reciprocal for noncompliance. Under Alternative IIA, if an appropriate test or procedure demonstrates compliance or noncompliance, this results in a corresponding presumption of continuing compliance or noncompliance. The Board believes that this reciprocity is preferable to the one-sided presumption contained in the original Alternative II, 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 second major change from the original Alternative II, is that the presumption in Alternative IIA may be overcome by a preponderance of other relevant credible evidence. In the original Alternative II, the presumption could be overcome only by other relevant credible evidence that is clear and convincing, which is the highest standard of proof used in civil actions. The Board is concerned that it may not be appropriate to require such a high standard, as this may have the effect of raising the standard of proof in civil enforcement actions brought by the Department.

8. Statement of reasonable necessity for ALTERNATIVE IIB:

This alternative is a variation of Alternative II, originally set forth in the prior Notice of Public Hearing on Proposed Adoption and Amendment in this proceeding, published

at page 250 of the 2000 Montana Administrative Register, issue number 3.

The statement of reasonable necessity set forth in that previous Notice for Alternative II is incorporated herein by this reference, and is supplemented with the following statement.

This alternative contains one significant change to the original Alternative II. In the original Alternative II, there is a presumption of continuing compliance if compliance is demonstrated by an appropriate test or procedure. In this Alternative IIB, this presumption is made reciprocal for noncompliance. Under Alternative IIB, if an appropriate test or procedure demonstrates compliance or noncompliance, this results in a corresponding presumption of continuing compliance or noncompliance. This change is addressed in the statement of reasonable necessity for Alternative IIA, provided above in paragraph 7, and incorporated herein by this reference.

The only difference between this Alternative IIB and Alternative IIA, above, is that this Alternative IIB requires that the presumption may be overcome only by other relevant credible evidence that is clear and convincing. This is the same as the original Alternative II.

9. Statement of reasonable necessity for ALTERNATIVE III:

This alternative recognizes that an evidentiary presumption is currently available under Montana law that will address the concerns raised in this proceeding. Under section 26-1-602(32), MCA, a source can obtain a presumption of continuing compliance if the source can demonstrate that the case-specific facts support a presumption of continuing compliance. The same is true for a party seeking to establish noncompliance. If the Department or a third party seeks a presumption of continuing noncompliance, the burden falls on the Department or third party to make that demonstration. Either way, the presumption is established only after a fact-specific showing has been made that the presumption is appropriate.

Mandating a presumption of continuing compliance or noncompliance, as provided in Alternatives IIA and IIB, may make it easier to obtain the presumption, but creates the possibility that the presumption would be applied in situations when it is not appropriate. As a compromise, this alternative provides that such a presumption be considered in all cases, and used if found to be factually appropriate.

The use of section 26-1-602(32), MCA, an established evidentiary principle under state law, will help to ensure uniformity in judicial and administrative proceedings, since courts and administrative bodies are familiar with and routinely use the Montana Rules of Evidence and related principles when making evidentiary determinations.

The Board also believes that the balance struck by this alternative may be appropriate since the source possesses and controls the information necessary to establish or rebut any presumption. Requiring a presumption of continuing compliance or noncompliance in all instances may not confer an equal benefit, since the main benefit may be to relieve the source of any obligation to come forward to establish the propriety of a presumption of continuing compliance.

The presumption considered under this alternative would be overcome by a preponderance of the evidence, the standard of proof typically applied in civil actions. Thus, there is no concern that this alternative would change the Department's burden of proof in an enforcement action.

Finally, under this alternative credible evidence is to be used for determining the compliance status under standards or limitations adopted pursuant to Title 75, Chapter 2, MCA, in addition to the requirements of ARM Title 17, Chapter 8. This language is necessary to ensure that many of the area and pollutant-specific requirements of the State Implementation Plan, often adopted through Board Order, are also covered by this rule.

10. Statement of reasonable necessity for ALTERNATIVE IV:

This alternative does not contain any type of presumption for the established performance or compliance test procedure or method, but instead defines the type of information that may be presumed to be credible evidence. Specifically, this alternative specifies that the information resulting from particular test and monitoring methods is presumptively credible evidence in determining whether a source has violated an emission limit.

Both North and South Dakota have rules that are similar to this alternative. The Dakotas' rules were modeled after the 1993 enhanced monitoring rule proposed by the U.S. Environmental Protection Agency. The EPA enhanced monitoring rule was later withdrawn and split into compliance assurance monitoring and credible evidence. EPA has not requested that North and South Dakota change their rules in response to the final federal credible evidence rule. Like the North and South Dakota rules, this alternative follows the language used by EPA in the enhanced monitoring rule.

This alternative strikes a certain balance between the practice of using particular test and monitoring methods, and the recognition that other information exists which may be relevant and credible to the compliance determination. The balance achieved in this alternative represents a move toward meeting the concerns of the regulated community regarding certainty, but in a format that has not received EPA disapproval.

11. Statement of reasonable necessity for ALTERNATIVE V:

This alternative does not contain any type of presumption for the established performance or compliance test procedure or method, but prohibits the use of credible evidence to prove a violation of any requirement when the most recent established performance or compliance test procedure or method demonstrates compliance with the same requirement.

If credible evidence demonstrates a violation but the last performance or compliance test procedure or method prior to the violation demonstrates compliance, the person shall again perform the appropriate test method or procedure to determine the compliance status. The person shall not be found in violation unless this subsequent test also demonstrates noncompliance.

The Board believes that this alternative may give appropriate weight to the established performance or compliance test procedure or method, which is often the primary means for determining compliance, and may be inherently more reliable than other credible evidence as an indicator of compliance. Accordingly, the Board concludes that it may be appropriate to find that in the absence of a corroborating compliance test procedure or method, other credible evidence cannot, in and of itself, prove a violation. Consistent with this conclusion, if the most recent performance or compliance test demonstrating compliance occurred after the violation demonstrated by other credible evidence, then no violation may be found to exist.

12. 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 July 12, 2000. To be guaranteed consideration, the comments must be postmarked on or before that date.

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

14. 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, 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.

15. 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 May 15, 2000.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 17.8.102 and 17.8.103)
pertaining to air quality)
incorporation by reference)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On July 5, 2000 at 10:00 a.m. in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a hearing to consider the proposed amendment of the above-captioned rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5 p.m., June 28, 2000, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

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

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

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~1998~~ 1999, edition of the Code of Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by reference, the reference refers to the 1988 edition of the USC and Supplement V (1993);

(c) referred to a section of the Montana Code Annotated (MCA), the reference is to the ~~1997~~ 1999 edition of the MCA;

(d) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~1998~~ 1999, edition of the Administrative Rules of Montana (ARM).

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

17.8.103 INCORPORATION BY REFERENCE (1) through (1)(m) remain the same.

(n) ARM 17.54.1101, which defines the class of activities subject to regulation under 75-10-405(2)~~(f)~~(e) and 75-10-406, MCA, relating to boilers and industrial furnaces;

(o) section 75-10-403~~(7)~~(8), MCA, which sets forth the statutory definition of "hazardous waste";

(p) remains the same.

(2) remains the same.

AUTH: 75-2-111, MCA
IMP: Title 75, chapter 2, MCA

4. The Board is proposing amendments to ARM 17.8.102 to update the incorporations by reference by adopting the most recent editions of the Code of Federal Regulations, the Montana Code Annotated and the Administrative Rules of Montana. These proposed amendments are necessary to allow the Department to follow the most recent editions of state statutes and rules and federal regulations. The failure to adopt the most recent edition of the Code of Federal Regulations may result in the loss of primacy for the air program. The policy of the Montana legislature has been for state agencies to retain primacy over environmental protection programs.

The Board is proposing to delete from the title of ARM 17.8.102 the reference to the availability of referenced documents. When the Board proposed this new rule in 1996, the proposed rule contained information regarding the availability of referenced documents for the entire chapter of air quality rules. In response to comments, the Board decided to delete this language from the final rule and place it in separate rules in each rule subchapter. However, the Board did not amend the title of the rule to reflect this revision from the proposed rule.

The Board is proposing the amendments to ARM 17.8.103(1)(n) and (o) to correct references to statute subsections that were renumbered by the 1997 legislature.

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 July 12, 2000. To be guaranteed consideration, the comments must be postmarked on or before that date.

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

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA,

underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, or may be made by completing a request form at any rules hearing held by the Board.

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

BOARD OF ENVIRONMENTAL REVIEW

by: Joe Gerbase
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State May 15, 2000.

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

In the matter of the	)	NOTICE OF PROPOSED
adoption of Rule I and the	)	ADOPTION AND AMENDMENT
amendment of ARM 37.86.2901)	
and 37.86.2905 pertaining to)	
inpatient hospital services	)	NO PUBLIC HEARING
reimbursement rates	)	CONTEMPLATED

TO: All Interested Persons

1. On June 24, 2000, the Department of Public Health and Human Services proposes to adopt and amend the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on June 12, 2000, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphslegal@state.mt.us.

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

[RULE I] QUALIFIED RATE ADJUSTMENT PAYMENT, ELIGIBILITY AND COMPUTATION (1) For the period of June 1, 2000 through June 30, 2001 the department will pay a qualified rate adjustment payment to an eligible rural hospital in Montana under the prospective payment system for inpatient services when:

(a) the hospital's most recently reported usual and customary (billed) charges are greater than the reimbursement received from Montana medicaid for inpatient care;

(b) the hospital is county owned, county operated or partially county funded, including tax district funding;

(c) the hospital is reimbursed under Montana medicaid's prospective payment system for inpatient services;

(d) county funds are transferred directly to the department and are certified by the county as match for payment of services eligible for federal financial participation in accordance with 42 CFR 433.51;

(e) the county funds are not federal funds or are federal funds authorized by federal law to be used to match other federal funds; and

(f) the hospital has executed and entered into a written agreement with the department and has agreed to abide by the terms of the written agreement:

(i) the written agreement between the department and the

hospital must be executed prior to the issuance of the qualified rate adjustment payment;

(ii) a retroactive effective date on the written agreement shall not be allowed; and

(iii) a hospital that does not enter into a written agreement with the department or does not abide by the terms of the agreement will not be eligible for the qualified rate adjustment payment process.

(2) The qualified rate adjustment payment is subject to the restrictions imposed by federal law, to federal approval of the state plan with respect to qualified rate adjustment and to the availability of sufficient state, county and federal funding.

(3) The department will calculate the amount of the qualified rate adjustment payment for each eligible rural hospital using the hospital's most recent submitted cost report and paid claims data. The qualified rate adjustment payment for each eligible rural hospital shall be the lesser of:

(a) the hospital's usual and customary (billed) charges;

(b) the amount of county funds transferred to the department plus federal financial participation; or

(c) 90% of the difference between the hospital's usual and customary (billed) charges and the reimbursement received from Montana medicaid.

(4) The department will pay the qualified rate adjustment only to inpatient hospitals that choose reimbursement on a prospective basis for the period June 1, 2000 through June 31, 2001 and such payments shall not be subject to the cost settlement process.

AUTH: Sec. 53-6-113, MCA

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

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

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) through (13) remain the same.

(14) "Qualified rate adjustment payment" means an additional payment as provided in [RULE I] to a county owned, county operated or partially county funded rural hospital in Montana reimbursed under the prospective payment system for inpatient services where the hospital's customary charges are greater than the reimbursement received from Montana medicaid for inpatient care.

(14) through (17) remain the same but are renumbered (15) through (18).

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.2905 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) through (17) remain the same.

(18) For the period of June 1, 2000 through June 30, 2001, subject to the availability of state, county and federal funding, restrictions imposed by federal law and approval of the state plan by the United States department of health and human services, health care financing administration (HCFA), a county owned, county operated or partially county funded rural hospital is eligible for the qualified rate adjustment payment once each fiscal year as provided in [RULE I].

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

4. The proposed new rule and amendments are necessary to establish an additional payment for Montana hospitals that are county owned, county operated, wholly or partially county funded, including tax district funding. Section 4711 of the Balanced Budget Act of 1997 (P.L. 105-33) repealed the "Boren Amendment", Social Security Act 1902(a)(13)(A) through (C), which required that Medicaid reimbursement of hospitals and nursing homes be reasonable and adequate to meet the costs incurred by efficiently and economically operated facilities. Section 4711 replaced the Boren requirements with a new Social Security Act 1902(a)(13)(A) which requires states to implement a public process for determining payment rates for inpatient hospital services under which proposed and final rates, methodologies underlying the rates, and justification for the proposed rates are published and subject to public review and comment.

Section 4711 applies to payments for items and services furnished on or after October 1, 1997. According to a Health Care Financing Administration (HCFA) Letter to State Medicaid Directors, December 10, 1997, "[t]he intent of Sec. 4711 is to provide states with maximum possible flexibility, as well as to minimize HCFA's role in reviewing inpatient hospital and long-term care state plan amendments involving payment rate changes".

The department intends the proposed additional payments to promote adequate funding of county owned, county operated or partially county funded rural hospitals and to help ensure medicaid patients have continued access to hospital services in the rural counties of Montana.

The proposed amendment to ARM 37.86.2901 defines the term "qualified rate adjustment payment", as it is to be used by the department to describe the additional payments to county owned, county operated or partially county funded rural hospitals.

The proposed amendment to ARM 37.86.2905 adds the qualified rate adjustment payment to the reimbursement formula for Medicaid inpatient hospital services. The proposed payment would be

subject to funding availability, restrictions imposed by federal law and approval of the state plan by the federal regulating authority, HCFA.

Proposed [RULE I] details the requirements for eligibility and the computation of each eligible rural hospital's qualified rate adjustment payment. It also specifies the terms of payment.

The department considered other options for promoting adequate funding of rural hospitals. State budget considerations limit the department's spending authority as defined in House Bill 2 enacted by the 1999 legislature. Furthermore, the rural hospitals most in need of supplementary Medicaid payments would not be eligible to receive disproportionate share payments. Those payments are designed to compensate hospitals that serve a disproportionately large number of Medicaid patients.

The department could have refrained from proposing additional Medicaid payments to promote adequate funding of rural hospitals. However, the department finds that would not be in the best interests of the citizens of Montana. Hospitals that qualify for the proposed qualified rate adjustment payment provide valuable services to the citizens of the rural counties of Montana. To continue these services over time, the hospitals must be adequately funded. The closure of any of the potentially eligible rural hospitals would limit the access of Montana Medicaid patients and other citizens to quality local health care.

5. The proposed rule adoption and amendments will be applied beginning on June 1, 2000. The Department was unable to publish the proposed rules in time to implement the June 1, 2000 effective date without retroactive effect. The qualified rate adjustment was only recently proposed and significant legal research was required to verify its acceptability under federal and state law and regulations. There is no detrimental effect which would preclude an effective date prior to final publication, since the proposed rule provides supplemental payments beneficial to all eligible hospitals.

6. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on June 22, 2000. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

7. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in

writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on June 22, 2000.

8. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be three based on the 35 county owned, county operated or partially county funded inpatient hospitals affected by rules covering inpatient hospital services reimbursement rates.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State May 15, 2000.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of New Rules I and II (ARM)
4.12.1320 and 4.12.1321))
pertaining to Japanese beetle)
(Popillia japonica))

TO: All Concerned Persons

1. On April 13, 2000, the Montana Department of Agriculture published notice of the proposed adoption of New Rules I and II concerning Japanese beetle (Popillia japonica) at page 905 of the 2000 Montana Administrative Register, Issue No. 7.

2. The department has adopted new RULE I, ARM 4.12.1320 with the following change, new matter underlined, and new RULE II, ARM 4.12.1321 exactly as proposed:

4.12.1320 DEFINITIONS, JAPANESE BEETLE QUARANTINE

Reason: The department added the phrase "Japanese Beetle Quarantine" to the catchphrase to clarify that the definitions apply only to the Japanese beetle quarantine (ARM 4.12.1321) and not to other rules adopted under this subchapter.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ W. Ralph Peck
Ralph Peck, Director
DEPARTMENT OF AGRICULTURE

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

Certified to the Secretary of State May 15, 2000.

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of rules pertaining to) AND ADOPTION
examinations, temporary)
permits, continuing education)
requirements, unprofessional)
conduct, fees, interns and)
preceptors, recertification,)
denial and revocation)
and the adoption of a new rule)
pertaining to patient records)

TO: All Concerned Persons

1. On March 16, 2000, the Board of Chiropractors published a notice of the proposed amendment and adoption of the above-stated rules at page 663, 2000 Montana Administrative Register, issue number 5. The hearing was held April 12, 2000.

2. The Board has amended ARM 8.12.603 and 8.12.616 exactly as proposed.

3. The Board has amended ARM 8.12.604, 8.12.606, 8.12.607, 8.12.615 and 8.12.904 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.12.604 TEMPORARY PERMIT (1) through (4) will remain as proposed.

(5) Any advertisement where the temporary permit holder is named or pictured must designate him/her as a ~~temporary permit holder~~ pre-graduate or post-graduate intern. This designation must appear with the name of the supervising licensed chiropractor.

8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS

(1) will remain as proposed.

(2) All licensees shall sign an affidavit provided on the renewal application which states that they have, in the year preceding the application for renewal, attended at least 12 hours of board-approved continuing education. An annual random audit of active licensees will be conducted to verify compliance.

(3) through (8) will remain as proposed.

8.12.607 UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of 37-1-316, MCA, the board further defines unprofessional conduct as follows:

(1) through (15) will remain as proposed.

(16) failing to keep adequate patient records in compliance with ~~generally accepted standards of practice~~ the following requirements:

(a) all records must be legible and contain at a minimum:

- (i) date of service;
- (ii) pertinent history;
- (iii) relevant symptomatology;
- (iv) physical findings;
- (v) results of diagnostic tests;
- (vi) clinical assessment;
- (vii) treatment procedures; and
- (viii) patient progress.

8.12.615 FEE SCHEDULE

- (1) through (3) will remain as proposed.
- (4) Late renewal fee 200 \$50
- (5) through (12) will remain as proposed.

8.12.904 RECERTIFICATION - DENIAL - REVOCATION

(1) Effective September 2, 2000 a minimum of four hours of specialized continuing education relevant to impairment evaluation must be demonstrated every four years, or within one year of a new edition to the American medical association's guides to the evaluation of permanent impairment. These hours must be demonstrated in order to qualify for ~~renewal of certification every four years or within one year of new journal of American medical association (JAMA) guidelines renewal.~~ This requirement is in addition to the continuing education hours ~~required for annual renewal of licenses to practice chiropractic in this state.~~

4. The Board adopted NEW RULE I (ARM 8.12.618) PATIENT RECORDS RETENTION as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.12.618 PATIENT RECORDS RETENTION (1) Chiropractors are required to retain adult patient records and x-rays for a minimum of five years and a minor patient's records and x-rays for a minimum of five years from their last treatment or at least one year past their 18th birthday. Medicaid requires that minor patient records be kept until the patient's 23rd birthday.

5. The Board received 19 comments. The comments received and the Board's responses are as follows:

ARM 8.12.603

COMMENT NO. 1: The Montana Chiropractic Association agrees with the proposed rule.

RESPONSE: The Board thanks the Association for its support.

COMMENT NO. 2: Roger Combs, D.C., also agrees with this proposed rule, but feels it should also include the statement

"in accordance with state law a 75 percentile on all sections must be obtained."

RESPONSE: As Dr. Combs states this is already addressed by Section 37-12-304(2), MCA.

ARM 8.12.604

COMMENT NOS. 3 and 4: The Montana Chiropractic Association and Roger Combs, D.C. agree with this proposed rule.

RESPONSE: The Board thanks the Association and Dr. Combs for their support.

COMMENT NO. 5: Dr. Marlin Braun suggested using the wording pre-graduate or post-graduate intern in place of the words "temporary permit holder" in the second to the last sentence of subsection (5).

RESPONSE: The Board agrees with Dr. Braun and amended the rule accordingly.

ARM 8.12.606

COMMENT NO. 6: The Montana Chiropractic Association asked if the Board was considering a mechanism to verify continuing education or is it strictly an "honor" system.

RESPONSE: The Board considered the comment and amended the proposed rule change by adding the language "An annual random audit of active licensees will be conducted to verify compliance."

COMMENT NO. 7: Roger Combs, D.C. agrees with the proposed rule.

RESPONSE: The Board thanks Dr. Combs for his support.

ARM 8.12.607

COMMENT NOS. 8 and 9: Mary Lou Garrett, Director of the Montana Chiropractic Legal Panel and Roger Combs, D.C. commented that they agreed with the proposed rule but questioned the vagueness of the term "generally accepted standards of practice."

RESPONSE: The Board agrees with the comments and amended the rule accordingly.

COMMENT NO. 10: The Montana Chiropractic Association agrees with the proposed rule.

RESPONSE: The Board thanks the Association for its support.

ARM 8.12.615

COMMENT NOS. 11, 12 and 13: Steven Pleasants, D.C., Roger Combs, D.C. and the Montana Chiropractic Association do not feel the Board should raise the fee from \$35 to \$200. Dr. Combs suggested that the late fee be raised to only \$50.

RESPONSE: The Board states that the comments are well taken and will reduce the increased late fee charge to \$50.

ARM 8.12.616

COMMENT NO. 14: The Montana Chiropractic Association agrees with this proposed rule but thinks that it should be clarified in the reasons on the jurisprudence examination that it is now an open book, take home exam.

RESPONSE: The Board will address this issue in the upcoming newsletter.

COMMENT NO. 15: Roger Combs, D.C., agrees with the proposed rule.

RESPONSE: The Board thanks Dr. Combs for his support.

ARM 8.12.904

COMMENT NO. 16: Karlene Berish, D.C. stated that she agrees with the proposed rule but thought it should be reworded to state it more clearly.

RESPONSE: The Board agreed to use her wording and amended the rule accordingly.

COMMENT NOS. 17 and 18: The Montana Chiropractic Association and Roger Combs, D.C., agree with the proposed rule.

RESPONSE: The Board thanks the Association and Dr. Combs for their support.

NEW RULE I PATIENT RECORDS RETENTION

COMMENT NO. 19: The Montana Chiropractic Association agrees with the need for this rule but informed the Board that Medicaid requires that minor patient records be kept until 23 years of age.

RESPONSE: The Board agreed to add this wording to the rule and amended the rule accordingly.

BOARD OF CHIROPRACTORS
PATRICK MONTGOMERY, D.C.,
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, May 15, 2000.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT AND
amendment of rules pertaining	)	ADOPTION
to dentist applications,)	
fees, conversion of inactive)	
status licenses, complaint)	
procedures; dental hygienist)	
licensure by credentials,)	
applications, fees, conversion)	
of inactive status licenses;)	
denturist applications,)	
examinations, interns, fees,)	
renewal, conversion of inactive)	
status licenses, license)	
reinstatement, complaint)	
procedures and the adoption of)	
a new rule regarding dental)	
hygienist local anesthetic)	
agent licensure)	

TO: All Concerned Persons

1. On February 24, 2000, the Board of Dentistry published a notice of the proposed amendment and adoption of the above-stated rules at page 518, 2000 Montana Administrative Register, issue number 4. The hearing was held March 22, 2000.

2. The Board has amended ARM 8.16.402A, 8.16.405, 8.16.408, 8.16.410, 8.16.605A, 8.16.605B, 8.16.606, 8.16.607, 8.17.403, 8.17.404, 8.17.405, 8.17.501, 8.17.702, 8.17.709, 8.17.710, and 8.17.811 exactly as proposed.

3. The Board adopted NEW RULE I (ARM 8.16.611) DENTAL HYGIENE LOCAL ANESTHETIC AGENT LICENSURE exactly as proposed.

4. The Board received one comment. The comment received and the Board's response is as follows:

COMMENT No. 1: Written comment was received from Gina Gabrian, RDH, President of the Montana Dental Hygienists' Association. Commentor stated the Association's support of the proposed new rule regarding local anesthesia credentialing for dental hygienists.

RESPONSE: The Board acknowledges the comment. No response is warranted because Commentor agrees with the new rule.

BOARD OF DENTISTRY
WAYNE HANSEN, DDS, 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, May 15, 2000.

BEFORE THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS
AND AUDIOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of rules pertaining to fees)

TO: All Concerned Persons

1. On March 16, 2000, the Board of Speech-Language Pathologists and Audiologists published a notice of the proposed amendment of ARM 8.62.413 at page 687, 2000 Montana Administrative Register, issue number 5.

2. The Board has amended ARM 8.62.413 exactly as proposed.

3. The Board received no comments.

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
TERI BEAN, CHAIRMAN

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

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

Certified to the Secretary of State, May 15, 2000.

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

In the matter of the)
amendment of ARM 12.6.901)
regulating personal water-) CORRECTED NOTICE
craft on Tongue River) OF AMENDMENT
Reservoir)

TO: All Concerned Persons

1. On May 11, 2000, the Montana Fish, Wildlife and Parks Commission (commission) published notice of the amendment of ARM 12.6.901 concerning regulation of personal watercraft on the Tongue River Reservoir at page 1216 of the 2000 Montana Administrative Register, Issue Number 9. The commission provided two alternative proposals for consideration.

2. This corrected notice is being filed to correct an error in the amendment of ARM 12.6.901 in that subsection (1)(c) Big Horn County (D), making the Tongue River a no wake zone from the Wyoming border to the Tongue River Reservoir, was omitted in the notice of amendment. This section was intended to be part of the rule as noted in the March 10, 2000, Commission Minutes, page 253.

In addition, (2) was not addressed in either the proposal or adoption notice. No changes were made to (2) as shown in this corrected notice.

12.6.901 WATER SAFETY REGULATIONS (1) through (1)(b) remain the same.

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Big Horn County: (A) through (C) remain as amended.
(D) The Tongue River from the Wyoming border to the Tongue River Reservoir.

(d) through (g) remain the same as amended.
(2) remains the same.

BY:

/s/ S.F. Meyer

/s/ Robert N. Lane

S.F. MEYER
Commission Chairman

ROBERT N. LANE
Rule Reviewer

Certified to the Secretary of State May 15, 2000

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 17.8.302 pertaining to)
cement manufacturing industry)
and primary lead smelting)
maximum achievable control) (AIR QUALITY)
technology)

TO: All Concerned Persons

1. On February 10, 2000, the Board of Environmental Review published notice of the proposed amendment of ARM 17.8.302 pertaining to cement manufacturing industry and primary lead smelting maximum achievable control technology at page 261 of the 2000 Montana Administrative Register, Issue No. 3.

2. The Board has amended ARM 17.8.302 as proposed.

3. No comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

by: Joe Gerbase
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State May 15, 2000.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 17.30.630 pertaining to)
the temporary water quality)
standards for portions of Mike)
Horse Creek, Beartrap Creek and)
the upper Blackfoot River)

NOTICE OF AMENDMENT

(WATER QUALITY)

TO: All Concerned Persons

1. On February 10, 2000 the Board of Environmental Review published notice of the proposed amendment to ARM 17.30.630 pertaining to the temporary water quality standards for portions of Mike Horse Creek, Beartrap Creek and the upper Blackfoot River at page 263 of the 2000 Montana Administrative Register, Issue No. 3.

2. The Board has amended ARM 17.30.630 with the following changes:

17.30.630 TEMPORARY WATER QUALITY STANDARDS

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

~~(c) These temporary standards are effective from June 1, 2000, through May 31, 2008.~~

(i) Except as provided in (2)(c)(ii), these standards are effective until May 31, 2008.

(ii) On or before September 1, 2003, the department shall certify to the board the date upon which the United States granted authority to the petitioner, asarco, inc., to conduct water restoration activities on the federal land that is subject to the implementation plan. If the date certified is later than May 31, 2001, the effective period established in (2)(c)(i) will be automatically extended by the number of days that elapsed between May 31, 2001, and the date certified. However, this extension may not exceed an additional two years beyond May 31, 2008.

(d)(i) Except as provided in (2)(d)(ii) below, the temporary water quality standards for Mike Horse Creek, from the clean water diversion structure (N47°1'19.3", W112°21'40.9") to its confluence with Beartrap Creek (N47°1'44.0", W112°21'13.0"), are as follows. For the reach described above, no increase from existing conditions for any of the parameters listed below (no decrease for pH) is allowed. The numeric temporary standards for the specific parameters listed below apply only at the monitoring site location BRSW-22 used to calculate those temporary standards. No more than 3% of the monitored samples may exceed the numeric metals standards or may be less than the pH standard below. Metals standards are in terms of micrograms per liter (µg/liter) total recoverable concentrations and the pH standard is in standard units (su).

<u>Parameter</u>	<u>µg/liter</u>
Cadmium	135.
Copper	3,000.
Iron	900.
Lead	230.
Manganese	6,000.
Zinc	22,000.
pH	must be maintained above 6.5 su.

(ii) remains the same.

(e)(i) Except as provided in (2)(e)(ii) below, the water quality standards for Beartrap Creek, from the foot of the Beartrap tailings impoundment dam (N47°1'42.1", W112°21'11.3") to its confluence with Anaconda Creek (N47°2'5.8", W112°21'31.1"), are as follows. For the reach described above, no increase from existing conditions for any of the parameters listed below (no decrease for pH) is allowed. The numeric temporary standards for the specific parameters listed below apply only at the monitoring site location BRSW-23 used to calculate those temporary standards. No more than 3% of the monitored samples may exceed the numeric metals standards or may be less than the pH standard below. Metals standards are in terms of micrograms per liter (µg/liter) total recoverable concentrations and the pH standard is in standard units (su).

<u>Parameter</u>	<u>µg/liter</u>
Cadmium	50.
Copper	700.
Iron	500.
Lead	80.
Manganese	3,700.
Zinc	7,500.
pH	must be maintained above 6.5 su.

(ii) remains the same.

(f)(i) Except as provided in (2)(f)(ii) below, the water quality standards for the Blackfoot River, from Anaconda Creek (N47°2'5.8", W112°21'31.1") to the confluence of Stevens Gulch (N47°2'24.8", W112°22'15.8"), are as follows. For the reach described above, no increase from existing conditions for any of the parameters listed below (no decrease for pH) is allowed. The numeric temporary standards for the specific parameters listed below apply only at the monitoring site location BRSW-9 used to calculate those temporary standards. No more than 3% of the monitored samples may exceed the numeric metals standards or may be less than the pH standard below. Metals standards are in terms of micrograms per liter (µg/liter) total recoverable concentrations and the pH standard is in standard units (su).

<u>Parameter</u>	<u>µg/liter</u>
Cadmium	16.
Copper	220.
Lead	25.
Manganese	4,300.

Zinc 6,000.
pH must be maintained above 6.5 su.

(ii) remains the same.

(g)(i) Except as provided in (2)(g)(ii) below, the water quality standards for the Blackfoot River, from the confluence of Stevens Gulch (N47°2'24.8", W112°22'15.8") to the confluence with Pass Creek (N47°2'30.5", W112°22'52.8"), are as follows. For the reach described above, no increase from existing conditions for any of the parameters listed below (no decrease for pH) is allowed. The numeric temporary standards for the specific parameters listed below apply only at the monitoring site location BRSW-12 used to calculate those temporary standards. No more than 3% of the monitored samples may exceed the numeric metals standards or may be less than the pH standards below. Metals standards are in terms of micrograms per liter (µg/liter) total recoverable concentrations and the pH standard is in standard units (su).

<u>Parameter</u>	<u>µg/liter</u>
Cadmium	10.
Copper	70.
Iron	340.
Lead	23.
Manganese	900.
Zinc	2,700.
pH	must be maintained above 6.5 su.

(ii) remains the same.

3. The Board received the following comments; Board responses follow:

COMMENT #1: The Board should not adopt the temporary water quality standards for the petitioned streams. Instead, the existing permit and permit conditions should remain in force and reclamation should be completed.

RESPONSE: The existing Montana Pollutant Discharge Elimination System (MPDES) permit authorizes the discharges from two adits located on ASARCO's property. The reclamation and wetland system for the two point source discharges are meeting the schedule in the permit and treatment will be completed by the time the permit is renewed in October 2000. Regardless of meeting the permit schedule, the wetland treatment system has not developed to the point where the discharges will meet B-1 standards at the time the permit is renewed. Additional time is needed for the wetland treatment system to reach its full potential and for additional reclamation, not related to the point source discharges, to be completed. The additional reclamation is necessary to address nonpoint source runoff from historic mine wastes located on federal lands and other private property that add pollutants to these stream segments. The MPDES permit does not require treatment or otherwise address nonpoint source

runoff from lands that are not owned by ASARCO. The purpose of adopting the temporary standards is to address these nonpoint sources so that water quality in these segments attains B-1 standards. At that point, the permit limits for discharges from the adits owned by ASARCO will be adjusted to meet B-1 standards.

The section of the Water Quality Act authorizing temporary water quality standards addresses the situation in the Upper Blackfoot Mining Complex (UBMC). The temporary standards provision provides a mechanism that allows a permittee to address historic mining impacts from nonpoint source pollution without penalizing the point source discharger by imposing permit limits that cannot be met due to uncontrolled runoff. Simply refusing to adopt temporary standards, as requested by this commentor, will not result in cleaner water, because there will be no plan to address the nonpoint sources of pollution that are contributing to the impairment of these stream segments.

For the reasons given above, the Board believes that adopting the temporary standards is necessary to address the cleanup of nonpoint sources in the UBMC that are not regulated under MPDES permit requirements.

COMMENT #2: There is no proof that the Blackfoot River did not meet water quality standards (B-1) prior to mining.

RESPONSE: The fact that the Blackfoot River may have met the water quality standards for B-1 streams prior to mining activities is not relevant to the Board's decision to adopt temporary standards for waters that currently do not achieve B-1 standards. If B-1 standards have not been achieved at the end of the time period established for implementing the cleanup plan, the Board would likely consider either providing additional time for further restoration activities, revising the stream use classifications, or adopting site-specific standards.

COMMENT #3: Weakening the water quality standards (adopting the proposed temporary standards) could compromise bull trout and westslope cutthroat trout recovery.

RESPONSE: Although the temporary standards relax existing water quality standards, the adoption of these standards will not compromise the recovery of bull trout and westslope cutthroat trout by allowing increases of pollutants. The temporary standards prohibit any increase in the concentration of metals above existing conditions and require that "the existing uses of these waterbodies must be maintained during the period that these temporary standards are in effect."

The anticipated improvement in water quality resulting from the cleanup and reclamation in the UBMC should in fact aid in bull trout and westslope cutthroat trout recovery.

COMMENT #4: As a practical matter it should not take 15 years to complete the remaining cleanup and judge its efficacy.

RESPONSE: The actions necessary to restore the water quality of these stream segments are complex and interrelated. There may be unforeseen delays in implementing certain actions that will affect the anticipated results of other remedial activities. Given the uncertainties of achieving immediate improvements from the planned restoration activities, the Board believes that an adequate period of time should be provided to both implement the plan and to monitor its results.

Based on the comments provided by ASARCO, the Board is also aware that immediate implementation of some of the restoration activities contemplated in ASARCO's plan is largely dependent upon access to lands held by the federal government. Although there is some uncertainty of obtaining a timely resolution of issues relating to conducting remedial activities on federal lands, the Board believes it is important to establish a deadline that will encourage ASARCO and the U.S. Forest Service to proceed with the cleanup as rapidly as possible. The Board realizes that negotiations with the United States may exceed the planned one year. Therefore, the Board has modified the timeframe to allow for extended negotiations as follows:

(i) Except as provided in (2)(c)(ii), these standards are effective until May 31, 2008.

(ii) On or before September 1, 2003, the department shall certify to the board the date upon which the United States granted authority to the petitioner, ASARCO, Inc., to conduct water restoration activities on the federal land that is subject to the implementation plan. If the date certified is later than May 31, 2001, the effective period established in (2)(c)(i) will be automatically extended by the number of days that elapsed between May 31, 2001, and the date upon which the United States granted access. However, this extension may not exceed an additional two years beyond May 31, 2008.

During the time that the temporary standards are in effect, it is the Board's responsibility to review the progress being made towards achieving B-1 standards. If the goals of the temporary standards are achieved before their scheduled termination date, the Board will be required to repeal the temporary standards and reinstate the B-1 standards. § 75-5-312(8), MCA. Alternatively, if the implementation plan is not being implemented according to its schedule, the Board may terminate the temporary standards and reinstate B-1 standards. Id. Or, based on the results reported at the 3-year reviews, the Board may determine that modifications to the plan are necessary or that the period the temporary standards are in effect needs to be extended.

COMMENT #5: Water quality standards for all parameters except zinc are currently being met in the petitioned stream reaches. Temporary water quality standards should only be adopted for

those parameters that are not meeting existing water quality standards.

RESPONSE: The chronic water quality standards in Department Circular WQB-7 are periodically not being met throughout the petitioned stream reaches for the parameters that are proposed for temporary standards. Monitoring data collected from Mike Horse Creek, Beartrap Creek and the Blackfoot River are summarized in the tables below. The underlined in-stream values exceed the applicable standard for the parameter described at the top of each column.

Table 1. The following tables contain the water quality data used to calculate the temporary standards for Mike Horse Creek, Beartrap Creek and the Blackfoot River, as well as the hardness adjusted B-1 water quality standard. The data were collected in 1997 through 1999. The map included with these responses should be referenced for locating the sample sites.

Site	Date	pH (FLD) (s.u.)	Cadmium T (mg/L)	Copper T (mg/L)	Iron T (mg/L)	Lead T (mg/L)	Manga- nese T (mg/L)	Zinc T (mg/L)
BRSW-9	01/06/ 1997	6.8	<u>0.007</u>	<u>0.018</u>	0.11	0.006	<u>4.52</u>	<u>5.87</u>
BRSW-9	05/27/ 1997	6.31	0.002	<u>0.022</u>	0.079	<u>0.013</u>	<u>0.15</u>	<u>0.48</u>
BRSW-9	10/21/ 1997	7.86	<u>0.006</u>	0.012	<0.025	0.004	<u>1.6</u>	<u>1.1</u>
BRSW-9	05/05/ 1998	8.04	<u>0.004</u>	0.013	0.041	<u>0.012</u>	<u>0.33</u>	<u>0.93</u>
BRSW-9	10/22/ 1998	6.45	<u>0.009</u>	0.01	0.12	0.005	0.019	<u>2.3</u>
BRSW-9	04/28/ 1999	7.3	<u>0.0155</u>	<u>0.169</u>	0.26	<u>0.024</u>	<u>1.1</u>	<u>3.45</u>
BRSW-9	05/28/ 1999	7.35	0.0027	<u>0.03</u>	0.07	<u>0.015</u>	<u>0.19</u>	<u>0.53</u>
	N	7	7	7	7	7	7	7
	Minimum	6.31	0.002	0.01	0.025	0.004	0.019	0.48
	Maximum	8.04	0.0155	0.169	0.26	0.024	4.52	5.87
	Mean	7.16	0.01	0.04	0.10	0.01	1.13	2.09
	SD	0.668	0.005	0.058	0.078	0.007	1.604	1.980
	Mean+2SD*	6.49	0.016	0.154	0.257	0.025	4.337	6.055
BRSW-12	05/27/ 1997	6.28	0.002	<u>0.02</u>	0.17	<u>0.013</u>	<u>0.15</u>	<u>0.47</u>
BRSW-12	10/20/ 1997	7.79	<u>0.004</u>	0.01	<0.025	<0.0015	<u>0.77</u>	<u>0.98</u>
BRSW-12	05/05/ 1998	7.69	0.003	0.012	0.055	0.006	<u>0.18</u>	<u>0.76</u>
BRSW-12	10/21/ 1998	7.05	<u>0.008</u>	0.009	<0.025	<0.0015	<u>0.12</u>	<u>2.4</u>
BRSW-12	04/27/ 1999	7.17	<u>0.0075</u>	<u>0.066</u>	<u>0.32</u>	<u>0.019</u>	<u>0.537</u>	<u>1.68</u>
BRSW-12	05/28/ 1999	6.97	0.0023	<u>0.022</u>	0.09	<u>0.013</u>	<u>0.158</u>	<u>0.48</u>
	N	6	6	6	6	6	6	6
	Minimum	6.28	0.002	0.009	0.025	0.0015	0.12	0.47
	Maximum	7.79	0.008	0.066	0.32	0.019	0.77	2.4
	Mean	7.16	0.0045	0.02	0.11	0.01	0.32	1.13
	SD	0.548	0.003	0.022	0.114	0.007	0.270	0.766
	Mean+2SD*	6.61	0.0097	0.066	0.343	0.023	0.859	2.660

Site	Date	pH (FLD) (s.u.)	Cadmium T (mg/L)	Copper T (mg/L)	Iron T (mg/L)	Lead T (mg/L)	Manga- nese T (mg/L)	Zinc T (mg/L)
BRSW-23	02/26/ 1997	5.44*	0.004	<0.002 5	0.05	<u>0.01</u>	<u>0.4</u>	<u>1.33</u>
BRSW-23	05/27/ 1997	7.2	0.004	<u>0.044</u>	0.05	<u>0.017</u>	<u>0.2</u>	<u>0.66</u>
BRSW-23	10/20/ 1997	7.94	<u>0.013</u>	0.011	<0.025	0.008	<u>1.4</u>	<u>2</u>
BRSW-23	05/05/ 1998	8.63	<u>0.01</u>	<u>0.047</u>	0.15	<u>0.032</u>	<u>0.6</u>	<u>2.2</u>
BRSW-23	10/22/ 1998	7.24	0.003	0.006	0.09	0.007	<u>0.61</u>	<u>0.59</u>
BRSW-23	04/29/ 1999	6.9	<u>0.0504</u>	<u>0.778</u>	<u>0.54</u>	<u>0.079</u>	<u>3.91</u>	<u>8.0</u>
BRSW-23	05/28/ 1999	7.83	<u>0.0045</u>	<u>0.079</u>	0.14	<u>0.03</u>	<u>0.323</u>	<u>0.85</u>
	N	6	7	7	7	7	7	7
	Minimum	6.9	0.003	0.0025	0.025	0.007	0.2	0.59
	Maximum	8.63	0.0504	0.778	0.54	0.079	3.91	8
	Mean	7.62	0.013	0.138	0.149	0.026	1.063	2.233
	SD	0.633	0.017	0.283	0.179	0.025	1.315	2.621
	Mean+2SD*	6.99	0.047	0.705	0.507	0.077	3.693	7.475

Site	Date	pH (FLD) (s.u.)	Cadmium T (mg/L)	Copper T (mg/L)	Iron T (mg/L)	Lead T (mg/L)	Manga- nese T (mg/L)	Zinc T (mg/L)
BRSW-22	02/26/ 1997	6.63	<u>0.037</u>	<u>0.05</u>	<u>0.37</u>	<u>0.14</u>	<u>0.64</u>	<u>12</u>
BRSW-22	05/27/ 1997	7	<u>0.012</u>	<u>0.19</u>	0.066	<u>0.043</u>	<u>0.34</u>	<u>2</u>
BRSW-22	10/22/ 1997	7.45	<u>0.087</u>	<u>0.088</u>	<0.025	<u>0.037</u>	<u>4.7</u>	<u>14</u>
BRSW-22	05/05/ 1998	7.85	<u>0.018</u>	<u>0.071</u>	0.072	<u>0.036</u>	<u>0.44</u>	<u>3.3</u>
BRSW-22	10/22/ 1998	6.55	<u>0.019</u>	<u>0.061</u>	0.13	<u>0.017</u>	<u>0.19</u>	<u>4</u>
BRSW-22	04/30/ 1999	6.67	<u>0.128</u>	<u>3.15</u>	0.11	<u>0.123</u>	<u>4.74</u>	<u>19.8</u>
BRSW-22	05/21/ 1999	6.44	<u>0.0406</u>	<u>1.02</u>	<u>0.94</u>	<u>0.214</u>	<u>1.61</u>	<u>5.68</u>
	N	7	7	7	7	7	7	7
	Minimum	6.44	0.012	0.05	0.025	0.017	0.19	2
	Maximum	7.85	0.128	3.15	0.94	0.214	4.74	19.8
	Mean	6.94	0.05	0.66	0.24	0.09	1.81	8.68
	SD	0.526	0.043	1.151	0.327	0.073	2.042	6.676
	Mean+2SD*	6.41	0.135	2.964	0.898	0.234	5.89	22.04

NOTES: T = total recoverable
 Below detect values (<) were replaced with 1/2 the limit for calculations (1/2 detection limit value is shown in table).
 * Mean - 2SD for pH.

Water Quality Standards (chronic) hardness adjusted for the sample sites used to calculate the temporary water quality standards.

Site	hardness mg/l CaCO ₃	Cd mg/l	Cu mg/l	Pb mg/l	Zn mg/l
	50	0.0014	0.0052	0.0013	0.0666
	100	0.0025	0.0093	0.0032	0.120
BRSW-22	165	0.0037	0.0143	0.0060	0.183
BRSW-23	209	0.0044	0.0175	0.0081	0.224
BRSW-29	177	0.0039	0.0152	0.0066	0.194
BRSW-9	177	"	"	"	"
BRSW-12	177	"	"	"	"

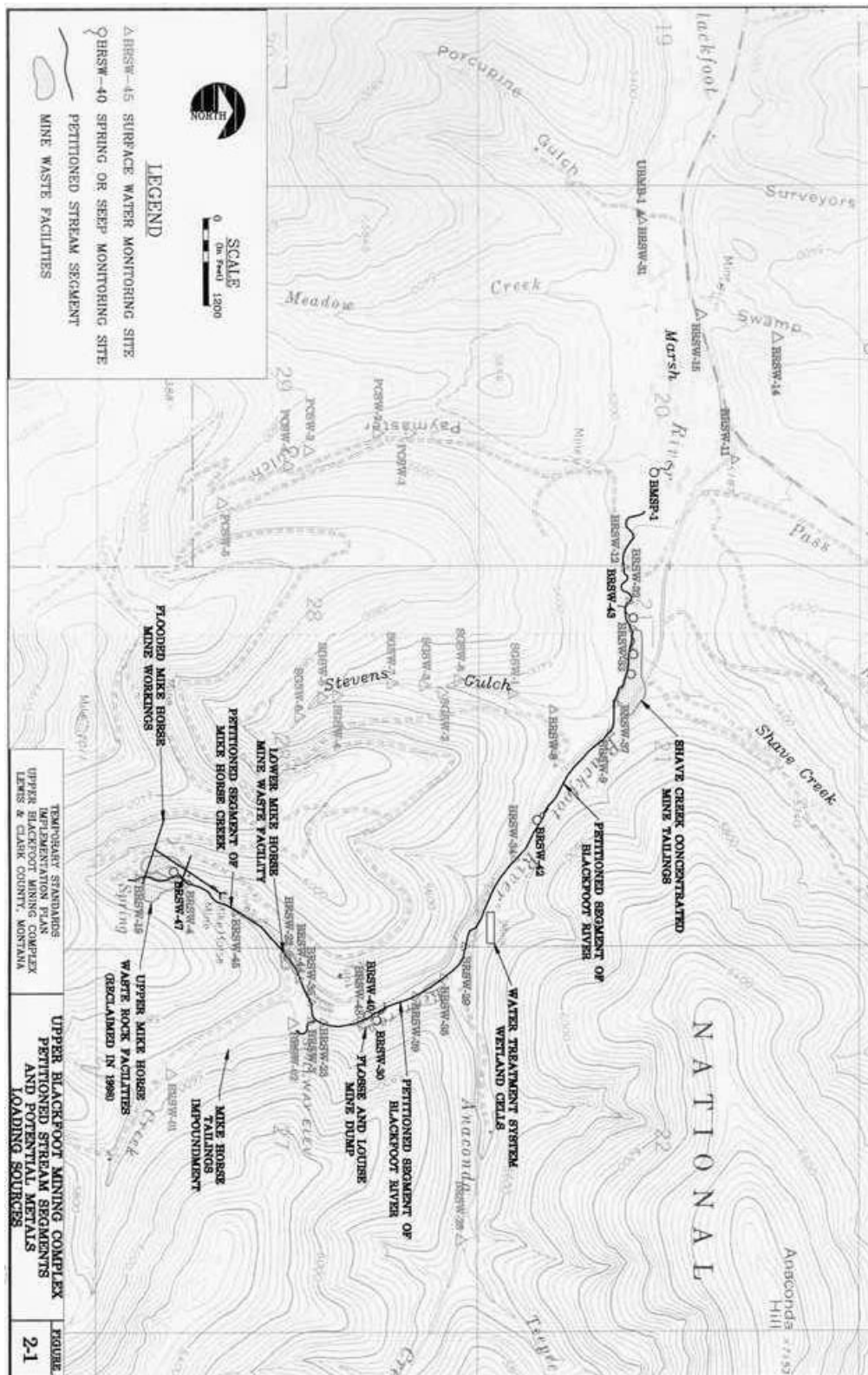


FIGURE 2-1

COMMENT #6: ASARCO has failed to substantiate the need for the temporary water quality standards.

RESPONSE: Under § 75-5-312(1), MCA, the Board may adopt temporary water quality standards when "substantive information" indicates that the water body or segment is failing to achieve applicable water quality standards. The monitoring data supplied by ASARCO in the petition clearly indicates that water quality standards are not being met within the stream reaches. Moreover, the water quality problems that have resulted in the upper Blackfoot due to historic mining activities are generally well known. The petition for temporary water quality standards and the associated implementation plan presented by ASARCO have been reviewed by the Board and by Department staff for compliance with § 75-5-312(3), MCA. Based upon that review, the Board concludes that the conditions present in the UBMC meet the requirements of § 75-5-312, MCA, and that the adoption of temporary water quality standards is appropriate.

COMMENT #7: The proposed temporary water quality standards represent an increase of pollutants at about 100 times allowed by the present B-1 standards. Most forms of aquatic life will not be able to live in the petitioned streams at the levels requested under this rule proposal.

RESPONSE: The proposed temporary numeric standards represent the existing quality of stream segments that have high levels of metals resulting from historic mining activities. Due to the relatively poor quality of the stream segments, aquatic life in these reaches is stressed and most other beneficial uses are limited. Although the numeric values of existing B-1 standards are being increased to reflect the current water quality, there will be no effect on existing aquatic life. Under the terms of the temporary standards, all existing uses, including existing aquatic life, must be maintained.

As the sources of metals are removed according to the terms of the implementation plan, the water quality and level of use support will improve. The goal of adopting the temporary standards is to have the petitioned stream segments meet the water quality standards and beneficial uses of the B-1 Classification.

The implementation plan requires collection of water quality data that will be reviewed on an annual basis and reported to the Board by the Department. The report will discuss the mean concentration and loading of the parameters in the temporary standards, and possible trends, and a comparison of mean concentrations to those for the baseline period (1997-1999).

COMMENT #8: The Proposal Notice or Implementation Plan did not explain how the temporary standards were developed or what the present water quality of the petitioned streams is.

RESPONSE: The proposed numeric standards represent the maximum

in-stream values for each of the parameters for which temporary standards are being adopted, (i.e., the mean plus two times the standard deviation of the data). These levels were selected as the appropriate temporary water quality standards so that under normal conditions there will not be any exceedance of the standards during the period of reclamation established under the rules. Except for temporary increases resulting from remediation activities, no increase above the background levels established by the proposed standards is allowed. The tables provided in response to Comment #5 contain the water quality data from which the standards were calculated.

COMMENT #9: ASARCO requested temporary standards in order to do the following:

(a) allow DEQ to set appropriate effluent limits and permit conditions for the discharge from the wetland treatment system;

(b) provide appropriate water quality standards and regulatory mechanisms for future remedial actions; and

(c) recognize that "natural sources" rather than historic mining wastes are the reason that current B-1 water quality standards are not being met.

ASARCO's stated reasons for requesting temporary water quality standards are not supported by the data or information presented in its petition because:

(a) except for zinc, the treatment system is meeting B-1 standards;

(b) given the goal of cleanup to B-1 standards, adoption of lesser temporary standards would complicate the cleanup decision-making process; and

(c) no data support the allegation that the Blackfoot in its natural condition did not meet B-1 standards.

RESPONSE: The data and content of the petition submitted by ASARCO meet the requirements of § 75-5-312(3), MCA, because they describe the affected stream segments, the existing water quality for the parameters of concern, the water quality standards that would be subject to modification, and the temporary standards that are being requested. In addition, the implementation plan submitted by ASARCO meets the requirements of § 75-5-312(3), MCA, because it describes the water quality limiting factors affecting the stream segments and the remediation activities that will eliminate or control those sources causing impairment.

Temporary standards are necessary because the stream segments will not meet B-1 standards until completion of cleanup. Although the discharge from the treatment system is in violation only of the zinc standard, nonpoint sources are causing violations of the cadmium, copper, iron, lead, manganese, and pH standards. In addition, cleanup activities will increase the concentration of certain parameters for short periods of time. Temporary standards will assure that cleanup can occur without violation of the law. Adoption of temporary standards does not change the goal of cleanup, which is to

achieve B-1 standards if possible. The issue of whether the Blackfoot River in its natural condition met B-1 standards is not relevant to the issue of whether to adopt temporary standards. Whether or not any data support this condition is also not relevant.

COMMENT #10: There are other regulatory avenues available to facilitate cleanup without changing water quality standards. These include (1) developing a Total Maximum Daily Load (TMDL) for the parameters of concern and (2) implementing the federal Superfund process.

RESPONSE: The Board understands that there are other programs under both state and federal law that may be used to restore impaired waters. The Board does not believe that those other programs would facilitate a cleanup that results in the attainment of B-1 standards more quickly than the plan proposed by ASARCO.

If DEQ were to develop a TMDL for the impaired segments, time would be needed to assess the sources contributing pollution to the stream reaches and then allocate pollutant loads among point and nonpoint sources. Similar start-up delays would likely occur under the state or federal Superfund process. Assuming DEQ promptly developed a TMDL for the impaired stream segments, the restoration activities necessary to address nonpoint sources would be strictly voluntary. § 75-5-703(6), MCA. If nonpoint sources are not addressed, the attainment of B-1 standards would not likely occur. Similarly, there is no guarantee that invoking Superfund authority would result in the attainment of B-1 standards given the complexity of restoring waters in the UBMC area. At this point, ASARCO has a plan and is willing to begin cleanup of the area under the temporary standards provisions of the State's Water Quality Act. The implementation plan submitted in support of the temporary standards will address both point and nonpoint sources. The plan will be reviewed periodically by the Board to ensure that water quality improvements are being achieved. The Board sees no reason to deny temporary standards on the unlikely assumption that a TMDL or a Superfund project may facilitate a prompter cleanup.

COMMENT #11: ASARCO's proposed implementation plan is inadequate and contains unreasonable timeframes. The proposed 15-year plan is too long, the 8-year plan outlined in the draft rule is reasonable, considering that U.S. Forest Service's testimony in the matter indicated that 3-5 years was sufficient to complete cleanup.

RESPONSE: This issue is discussed in response to Comment #4.

COMMENT #12: The implementation plan and temporary standards must have consistent timeframes to be effective.

RESPONSE: The timeframe of the implementation plan is based on

temporary standards established under this rule. The implementation plan shall be amended to be consistent with this rule. See response to Comment #4.

COMMENT #13: Adopting these standards will hinder rather than accelerate the cleanup process.

RESPONSE: See response to Comment #10.

COMMENT #14: Adopting these standards will set a dangerous precedent and invite many more petitions for temporary water quality standards.

RESPONSE: The statute authorizing temporary standards was enacted in 1995. The statute reflects a public policy that encourages the cleanup of impaired waters by persons who are willing to implement a plan designed to restore the quality of those waters to meet the applicable water quality standards "as soon as reasonably practicable." § 75-5-312(3)(d), MCA. Although other state programs may also be used to restore impaired waters, the Board does not agree that allowing a petitioner to undertake cleanup activities under the temporary standards statute will set a bad or dangerous precedent.

COMMENT #15: Disappointment was expressed about the public involvement process associated with ASARCO's petition. Members of the public were prepared to offer comments to the Board at its November 1999 meeting when the petition was initially presented and were prohibited from doing so. The Board should give petitioners and the public equal access to the rulemaking process.

RESPONSE: At the November 1999 Board meeting, ASARCO presented its petition for temporary water quality standards under the provisions of § 75-5-312, MCA. At that time, the Board assessed the petition to determine whether it conformed to the requirements of § 75-5-312, MCA. After determining the petition satisfied those requirements, the Board directed the Department to begin the rulemaking process. A decision to initiate the rulemaking process is not a decision to adopt rules. Rather, it is a decision to seek public comment on proposed rules. Both the public and the petitioner have been provided equal opportunity to comment on the proposal for temporary standards during the public comment period, and the Board has considered all comments.

COMMENT #16: ASARCO submitted comments stating that the 15-year duration as petitioned for the temporary standards is appropriate because:

(a) based on ongoing negotiations between ASARCO and the Forest Service and previous experiences with the Forest Service and other federal agencies, it is probable that one year will not be sufficient to resolve all access, permitting, and reclamation related issues;

(b) one year is not sufficient for characterization of potential source areas at the UBMC, given the constraints of obtaining necessary access and permits and resolving reclamation-related issues;

(c) two years for stream corridor reclamation may be optimistically realistic, and three years for reclamation of the tailings impoundment (if it is found to be a significant source of metals loading to streams) is not realistic. If significant reclamation of the impoundment is required (i.e., capping or removal), site preparations such as dewatering of the tailings would likely take two or more years alone. Complete reclamation could take five or more years;

(d) the draft rule timeframe is inadequate because it does not account for reclamation of other potential sources which will require more time to address;

(e) one to two years is not sufficient time to assess the post-reclamation water quality and achieve the critical objective of determining the maximum achievable water quality in the three petitioned stream segments; and,

(f) the post-reclamation timeframe should be the same as that approved by the Board for the New World Mining District temporary standards.

RESPONSE: The Board has considered comments from ASARCO and other comments on this issue in response to Comment #4. With respect to (f) above, the timeframe for the New World Mining District temporary standards is not relevant to this rulemaking.

COMMENT #17: ASARCO suggests that a narrative standard should be included in the rule that will address water quality in those portions of the petitioned stream segments other than where the numeric standards were calculated. ASARCO recommends that the rule include a narrative temporary standard requiring that water quality cannot become worse throughout the petitioned stream segments, instead of applying the numeric temporary standards to the entire stream reach. Suggested language follows:

Except as provided in (2)(d)(ii) below, the numerical temporary standards for specific parameters listed in this rule apply only at the monitoring site locations used to calculate the numeric standards (i.e., site BRSW-22 in Mike Horse Creek, site BRSW-23 in Beartrap Creek, site BRSW-9 in the upstream segment of the Blackfoot River and site BRSW-12 in the downstream segment of the Blackfoot River). Additionally, except as provided in (2)(d)(ii) below, no increase from existing conditions for any of the parameters that have been temporarily modified (no decrease for pH) is allowed at any point in the affected stream segments.

This language would be incorporated into each subsection of the rule.

RESPONSE: The Board feels that inserting the following amendment to the draft rule is simpler and adequately addresses the concerns expressed in the above comment.

Except as provided in (2)(d)(ii) below, the temporary water quality standards for Mike Horse Creek, from the clean water diversion structure (N47°1'19.3", W112°21'40.9") to its confluence with Beartrap Creek (N47°1'44.0", W112°21'13.0"), are as follows. For the reach described above, no increase from existing conditions for any of the parameters listed below (no decrease for pH) is allowed. The numeric temporary standards for the specific parameters listed below apply only at the monitoring site location BRSW-22 used to calculate those temporary standards. No more than 3% of the monitored samples may exceed the numeric metals standards or may be less than the pH standard below. Metals standards are in terms of micrograms per liter (µg/liter) total recoverable concentrations and the pH standard is in standard units (su).

The Board has amended this language into (2)(d)(i), (2)(e)(i), (2)(f)(i) and (2)(g)(i).

COMMENT #18: This comment includes 31 signatures on a petition. These commentators request that the Board vote against any relaxation of current water quality standards. ASARCO's petition asks for a 15-year timeframe in which to provide "appropriate water quality standards" for the Upper Blackfoot Mining complex "UBMC". Fifteen years or even one year of continued contamination of the Blackfoot River is unacceptable to the citizens of Montana. The commentators also ask that the Board follow the current water quality regulations that were enacted to guide the cleanup of these abandoned mining sites.

RESPONSE: The 1995 Legislature enacted the provisions for temporary water quality standards to address situations like that in the UBMC. Although the temporary standards are less stringent than the B-1 standards, the existing conditions will not be worsened. Of the options available, the Board believes that granting temporary standards for the petitioned stream reaches will accelerate the cleanup of the area and improve water quality more quickly than Superfund, TMDL or any other option that might be available.

COMMENT #19: The U.S. Forest Service does not support the implementation plan because it believes that reclamation activities on federal lands can be completed within the next 3-5 years. The Forest Service would not support any timeframe for temporary water quality standards beyond 8 years.

RESPONSE: See response to Comment #4.

COMMENT #20: It is the Forest Service's position that some of the proposed actions may be premature in concept. The ability for ASARCO to proceed with implementation of activities on National Forest System lands is contingent upon negotiation and approval by the Forest Service under the Comprehensive Environmental Reclamation, Compensation and Liability Act (CERCLA).

The Forest Service requests that the Board approve the implementation plan under the condition that specific reclamation activities on National Forest System lands must be in accordance with processes and requirements identified under CERCLA.

RESPONSE: The Board's adoption of temporary water quality standards is independent and not contingent upon any action taken by the federal government under CERCLA. Although the Board understands that the implementation plan in support of the temporary standards involves activities on federal lands, the Board does not believe that it must condition its approval of ASARCO's implementation plan upon compliance with federal Superfund requirements. If and when CERCLA processes are identified that conflict with the Petitioner's plan, then the Board will consider this issue.

COMMENT #21: The temporary water quality standards would allow increased levels of toxins and carcinogens including cadmium, copper, and lead to be discharged into the Blackfoot River watershed.

RESPONSE: The numeric values of the proposed temporary standards are greater than the existing B-1 values; however, the values for the temporary standards are based on monitoring data from the past three years and represent existing conditions. Except for temporary increases due to remediation activities, the provisions in the temporary standards do not allow any increase above existing conditions and existing uses must be maintained. Please see the summary tables (Comment #5) and discussion above.

COMMENT #22: Adoption of the proposed temporary standards would allow increased levels of toxins and carcinogens to be discharged into the Blackfoot watershed. These increases would violate existing water quality standards and, consequently, would violate a fundamental right to a "clean and healthful" environment. The Board cannot allow an abridgment of this fundamental right without first determining whether there is a "compelling" state interest and whether the least intrusive means is being employed to effectuate that interest.

RESPONSE: Adoption of the temporary numeric standards would not allow increased levels of toxins and carcinogens to be discharged into the Blackfoot. Rather, the numeric standards simply reflect the existing quality of waters that contain levels of pollutants that exceed applicable permanent standards.

Additional contributions of pollutants would be allowed only as a necessary and unavoidable consequence of cleanup activities and they may not impair existing uses of the streams.

These cleanup activities will permanently improve water quality as contemplated by Article IX, Section 1(1) of the Montana Constitution, which provides that the state and each person shall improve environmental conditions.

BOARD OF ENVIRONMENTAL REVIEW

by: Joe Gerbase
JOE GERBASE, Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State May 15, 2000.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 18.2.101, Model)
Procedural Rules)

TO: All Concerned Persons

1. On March 30, 2000, the Department of Transportation published notice of the proposed amendment of ARM 18.2.101 concerning the Attorney General's model rules of procedure at page 787, of the 2000 Montana Administrative Register, Issue Number 6.

2. The Department has amended ARM 18.2.101 exactly as proposed.

3. No comments or testimony were received.

MONTANA DEPARTMENT OF TRANSPORTATION

By: /s/ Marvin Dye

MARVIN DYE, Director

/s/ Lyle Manley

Lyle Manley, Rule Reviewer

Certified to the Secretary of State May 9, 2000

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of amendment	)	NOTICE OF AMENDMENT
of ARM 32.24.301 regarding	)	AND REPEAL
the pricing of producer)	
milk; and the repeal of)	
ARM 32.24.521 and 32.24.522)	
and amendment of ARM)	
32.24.523 in regards to)	
utilization, procedures to)	
purchase and marketing of)	
surplus milk	)	DOCKET NO. 1-00

To: All Concerned Persons

1. On January 31, 1999, the Montana board of milk control published notice of the proposed amendment of ARM 32.24.301, regarding the pricing of producer milk; and the repeal of ARM 32.24.521 and 32.24.522, and the amendment of ARM 32.24.523 in regards to utilization, procedures to purchase and marketing of surplus milk. Notice was published at page 282 of the 2000 Montana Administrative Register, Issue No. 3.

2. The board has amended rule 32.24.301 by adopting Alternative IV with the following changes, stricken matter interlined, new matter underlined:

32.24.301 PRICING RULES

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

(5) The minimum class I price per hundredweight at 3.5% butterfat which shall be paid to producers by distributors in the state of Montana shall be the monthly federal order price as calculated and published according to 7 CFR part 1000.50(a) through (c) plus a Montana class I location differential of \$2.55. If the resulting computation is below \$15 per hundredweight, the location differential of \$4.30 will be utilized and compared to a \$15 after-effect. The lower of the 2 numbers will become the minimum monthly announced Montana class I price.

(5)(a) through (7) remain the same as proposed.

(8) Producers who ship in excess of any beneficial use, and that milk is shipped to a different market and classified by statute and rule as class III, shall receive a price for that milk based on calculations in ARM ~~32.24.522~~ 32.24.523.

(9) through (11) remain the same as proposed.

AUTH: 81-23-104, MCA

IMP: 81-23-103, MCA

3. The board has repealed ARM 32.24.521 and 32.24.522 as proposed, and amended ARM 32.24.523 as proposed.

AUTH: 81-23-104, MCA
IMP: 81-23-103, MCA

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

COMMENT 1: At the public hearing, Meadow Gold Dairies, Inc., argued that implementation of a floor price would force them to go out-of-state to purchase its raw milk supply in order to stay competitive, and they intended to do exactly that. They also argued that the adoption of the proposed floor price would undo all the work leading to and reflected in the 1996 settlement agreement--as well as the tranquility that has existed in Montana's milk industry since then. Meadow Gold also argued that the proposed floor price was not flexible, as mandated by 81-23-302, MCA.

RESPONSE 1: The arguments from Meadow Gold are overruled. In response to Meadow Gold's threat to buy out-of-state milk, 81-23-302(10), MCA, mandates that distributors who have processing facilities in Montana, whenever possible, purchase milk from Montana producers, provided that milk is available from Montana producers at the prices set by the board of milk control. The board felt if the new flexible price did become higher, as a result of the floor price, then the processors and/or the retailers could absorb the added costs. Evidence was submitted showing the board that producers were not getting a fair and equitable price for their milk, nor earning a reasonable profit [81-23-102(k) MCA; and 81-23-302(3), MCA]. The board concluded the \$15.00 floor price was flexible, and this board has the authority to adopt flexible formulas [81-23-302(2), MCA].

BOARD OF MILK CONTROL

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 May 15, 2000.

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

In the matter of the	)	CORRECTED NOTICE OF
amendment of ARM 46.12.521,	)	AMENDMENT
46.12.4801, 46.12.4804,)	
46.12.4805, 46.12.4806,)	
46.12.4810, 46.12.4813,)	
46.12.4814, 46.12.4817,)	
46.12.4821, 46.12.4825,)	
46.12.4827, 46.12.5002,)	
46.12.5003, 46.12.5004,)	
46.12.5007 and 46.12.5010)	
pertaining to the Montana)	
medicaid passport to health)	
program)	

TO: All Interested Persons

1. On January 13, 2000, the Department of Public Health and Human Services published notice of the proposed amendment to the above-stated rules at page 42 of Montana Administrative Register, issue number 1 and on March 30, 2000, the notice of amendment at page 866 of the 2000 Montana Administrative Register, issue number 6.

2. The correction in this notice is to ARM 46.12.5007 [37.86.5110]. Matter to be added is underlined. Matter to be deleted is interlined.

46.12.5007 [37.86.5110] PASSPORT TO HEALTH PROGRAM: SERVICES (1) through (2)(ab) remain as proposed.
 (2)(ac) hospice as defined in ~~ARM 46.12.1819 and 46.12.1823(q)~~ ARM 46.12.1819 [37.40.801] and 46.12.1823 [37.40.806].
 (2)(ad) through (4) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
 IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-116, MCA

3. The correction in this notice is the result of a typographical error made by the Department in the previous rulemaking notice relating to rule 46.12.5007(2)(ac) [37.86.5110(2)(ac)].

The Department inadvertently typed a subsection reference that did not need a subsection. The subsection listed was ARM 46.12.1819 [37.40.801] and 46.12.1823(q) [37.40.806(q)]. The correct cite is ARM 46.12.1819 [37.40.801] and 46.12.1823 [37.40.806].

4. These rules have also been transferred to Title 37 in Montana Administrative Register

10-5/25/00

a different notice, therefore for clarity, both rule numbers have been listed.

5. All other rule changes in the Notice of Amendment remain as proposed.

6. Replacement pages for the corrected notice of amendment will be submitted to the Secretary of State on June 30, 2000.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State May 15, 2000.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of New Rule I (42.2.102), New)
Rule II (42.2.103), New Rule)
III (42.2.104), New Rule IV)
(42.2.105), and New Rule V)
(42.2.106) relating to)
Declaratory Rulings)

TO: All Concerned Persons

1. On March 16, 2000, the Department published notice of the proposed adoption of new rule I (42.2.102), II (42.2.103), III (42.2.104), IV (42.2.105) and V (42.2.106) relating to Declaratory Rulings at page 697 of the 2000 Montana Administrative Register, issue no. 5.

2. No comments were received regarding these rules.

3. The department has adopted the rules as proposed.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State May 15, 2000

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM)
42.11.309 relating to)
Commission Rate)
Applicability Date)

TO: All Concerned Persons

1. On March 16, 2000, the Department published notice of the proposed amendment of ARM 42.11.309 relating to Commission Rate Applicability Date at page 704 of the 2000 Montana Administrative Register, issue no. 5.

2. Written comments received are summarized as follows along with the response of the Department:

COMMENT NO. 1: Donna Glantz owner of B.Y.O.B., Inc. submitted comments and concerns regarding liquor stores being required to open their books in order to qualify for a commission adjustment. She stated she felt this request was intrusive, violates privacy and does not provide the department with the necessary data to show the costs and the means of generating a profit. Ms. Glantz further stated the department would find it better to judge the need of the commission adjustment based on the department-to-store dollar volume and units sold. Even the comparison of like time for previous years would be a better indicator of business changes experienced by the store than just opening the store's books.

Ms. Glantz indicated that lost revenue to agency stores due to all-beverage licensees becoming liquor stores needs to be included in any commission adjustment equation. She stated the agency stores were assured by the department that the all-beverage licensees who get an 8% case discount would not become their competitors. This is not true and when these all-beverages licensees become competitors they hurt the agency liquor store business. Additionally, the competition by these licensees isn't even on a level playing field. All-beverage licensees are allowed to be open for business on Sundays, Mondays and holidays. Additionally, they can sell beer and wine to augment their sales.

Ms. Glantz also stated, she believes the department needs to decide whether or not all-beverage licensees are truly on-premise only or are liquor stores. If they are liquor stores then they should be required to adhere to the requirements of Title 16, part 2, MCA as other liquor stores.

RESPONSE NO.1: The requirement to open a liquor store's books to the department is part of the agency liquor store contract with the State of Montana. This requirement refers to 16-2-101(6)(b)(i), MCA, which specifically requires an agent to demonstrate cost increases beyond their control, thus opening their books to the department.

The statutes require the 8% reduction of the posted price of liquor sold at the agency liquor store to any licensee purchasing liquor in unbroken case lots.

Title 16, Montana Code Annotated, allows an all-beverages licensee to sell liquor, beer and table wine at retail. This includes on and off premises. The law does not distinguish between on and off premises.

The rules help to clarify the law. If the Agency Liquor Store Owners Association believes a change is necessary they should contact legislative representatives.

The department believes the amendment to this rule is clear and complies with the statutory requirements for establishing an effective date to apply for a commission rate review. The rule will not be amended further at this time.

3. The Department has amended ARM 42.11.309 as proposed.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State May 15, 2000

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of New Rule I (42.15.429) and) AND AMENDMENT
amendment of ARM 42.15.401)
relating to Tax Benefits)

TO: All Concerned Persons

1. On March 16, 2000, the Department published notice of the proposed adoption of new rule I (42.15.429) and amendment of ARM 42.15.401 relating to tax benefits at page 702 of the 2000 Montana Administrative Register, issue no. 5.

2. No comments were received regarding these rules.

3. The Department has adopted new rule I (42.15.429) and amended ARM 42.15.401 as proposed.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State May 15, 2000

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of New Rule I (42.15.805) and) AND AMENDMENT
amendment of ARM 42.15.801,)
42.15.802, 42.15.803, and)
42.15.804 relating to Family)
Education Savings Program)
Account Rules)

TO: All Concerned Persons

1. On March 16, 2000, the Department published notice of the proposed adoption of new rule I and amendment of ARM 42.15.801, 42.15.802, 42.15.803, and 42.15.804 relating to Family Education Savings Program Account at page 693 of the 2000 Montana Administrative Register, issue no. 5.

2. A public hearing was held on April 6, 2000, where written and oral comments were received.

3. Oral and written comments received during and subsequent to the hearing are summarized as follows along with the response of the Department:

COMMENT NO. 1: The College Savings Bank stated that the department added a new (5) to ARM 42.15.803 which provides for the determination of what portion is attributable to nondeductible contributions. This is relevant because the nonqualified withdrawals of deductible contributions should be included in income, but nonqualified withdrawals of nondeductible contributions should not be included in income. They indicated that the rule should be further amended in (1) to include in Montana adjusted gross income nonqualified withdrawals of earnings and nonqualified withdrawals of deductible contributions (as opposed to all nonqualified withdrawals of principal).

RESPONSE NO. 1: The department agrees and has amended ARM 42.15.803(1) to reflect this clarification.

COMMENT NO. 2: The College Savings Bank commented that the language in ARM 42.15.803(6) creates a presumption that a withdrawal is a nonqualified withdrawal of deductible contributions. This language creates two presumptions - one that a withdrawal is nonqualified and that a nonqualified withdrawal is a withdrawal of nondeductible contributions. They recommended moving the word "nonqualified" from before the second "withdrawal" in the sentence to before the first "withdrawal" to better clarify the intent.

RESPONSE NO. 2: The department agrees with this recommendation and has amended ARM 42.15.803(6) as suggested.

4. The Department has amended ARM 42.15.803 as follows:

42.15.803 WITHDRAWALS FROM EDUCATIONAL FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS (1) Nonqualified withdrawals of ~~principal and interest~~ EARNINGS AND DEDUCTIBLE CONTRIBUTIONS from educational family savings accounts must be included in the account owner's Montana adjusted gross income in the year withdrawn.

(2) through (5) remain the same.

(6) The taxpayer shall have the burden of sustaining a claim that all or a portion of the contributions withdrawn were not attributable to deductible contributions. There shall be a presumption that a NONQUALIFIED withdrawal is a ~~nonqualified~~ withdrawal of deductible contributions.

AUTH: Sec. 15-30-305 and 15-62-201, MCA

IMP: Sec. 15-30-111 and 15-62-201, MCA

5. The department has amended ARM 42.15.803 with the amendments listed above.

6. The department has adopted new rule I (42.15.805) and amended ARM 42.15.801, 42.15.802 and 42.15.804 as proposed.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State May 15, 2000

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 42.23.501, 42.23.502,)
42.23.504, 42.23.511,)
42.23.512, 42.23.513,)
42.23.520, and 42.23.521)
relating to New and Expanded)
Industry Credit)

TO: All Concerned Persons

1. On March 30, 2000, the Department published notice of the proposed amendment of ARM 42.23.501, 42.23.502, 42.23.504, 42.23.511, 42.23.512, 42.23.513, 42.23.520, and 42.23.521 relating to New and Expanded Industry Credit at page 810 of the 2000 Montana Administrative Register, issue no. 6.

2. A public hearing was held on April 28, 2000, to consider the proposed amendment. No one appeared to testify and no written comments were received.

3. The Department has amended the rules as proposed.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State May 15, 2000

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION AND
of New Rule I (42.25.1814);) AMENDMENT
amendment of ARM 42.25.1801,)
42.25.1803, 42.25.1804,)
42.25.1806, 42.25.1807,)
42.25.1808, 42.25.1809,)
42.25.1810, and 42.25.1813)
relating to Oil and Gas Taxes)

TO: All Concerned Persons

1. On March 16, 2000, the Department published notice of the proposed adoption of new rule I (42.25.1814) and amendment of ARM 42.25.1801, 42.25.1803, 42.25.1804, 42.25.1806, 42.25.1807, 42.25.1808, 42.25.1809, 42.25.1810, and 42.25.1813 relating to Oil and Gas Taxes at page 706 of the 2000 Montana Administrative Register, issue no. 5.

2. A public hearing was held on April 6, 2000, where written and oral comments were received.

3. Oral and written comments received during and subsequent to the hearing are summarized as follows along with the response of the Department:

COMMENT NO. 1: The Montana Petroleum Association, Inc. (MPA), testified at the hearing and presented additional written comments regarding New Rule I (42.25.1814). MPA indicated that for the sake of clarity, reference to the incentive period being applicable to wells that have not produced for five years needs to be added to the new rule. Without the acknowledgment of the five-year-idle wells qualifying for the incentive periods, the phrase "incentive period only begins once" could lead to some confusion and needless searching of the statutes to find the applicability to the five-year-idle wells in 15-36-303, MCA.

The MPA suggested the department revise paragraph (1) of New Rule I (42.25.1814) to clarify the five-year-idle issue.

RESPONSE NO. 1: The department agrees that amending the rule to further clarify the time periods regarding the incentive periods may be necessary. However, the department believes that the language in (1) clearly addresses the time when an incentive period will begin and should not be amended. The department will add a new (2) to address the five-year-idle issue. Therefore, New Rule I (42.25.1814) is being amended to add language which is more similar to the specific statutory provisions of 15-36-303(19), MCA.

COMMENT NO. 2: The Montana Petroleum Association, Inc. (MPA), further testified that the reference to coalbed methane gas is not needed. Coalbed methane is natural gas and should

not be differentiated. Other tax production based on depth of the wells, i.e., 1500 feet and less receive one rate, 1501 to 3000 feet pay another rate, etc. Coalbed methane is shallow gas production, and some legislators in other states have wanted to put a different tax rate on it.

RESPONSE NO. 2: The department agrees that coalbed methane is natural gas and should not be differentiated. The department does not believe that the statement, "this includes coalbed methane gas" in ARM 42.25.1801(4), shows a differentiation of natural gas and coalbed methane gas. The term coalbed methane gas is used in Title 82, Montana Code Annotated, but is not part of the tax statutes of Title 15, Montana Code Annotated. For tax purposes this statement helps clarify the statutory intent to include coalbed methane gas when computing the tax. Therefore, the department will not strike the reference to coalbed methane gas as shown in ARM 42.25.1801.

4. After publication of the proposed amendments, and upon further review of the proposed language in ARM 42.25.1810, the department determined further clarification was necessary. Therefore, the Department introduced additional amendments at the hearing striking the reference to the year 2000 and adding the appropriate reference for either pre-1999 or post-1999 wells. The Department believes that these amendments more accurately represent the intent of the law.

5. The Department has amended new rule I (42.25.1814) and ARM 42.25.1810 as follows:

NEW RULE I (42.24.1814) INCENTIVE PERIOD (1) remains the same.

(2) THE INCENTIVE PERIODS ARE APPLICABLE FOR QUALIFYING PRODUCTION THAT OCCURRED DURING THE FIRST 12 MONTHS OF PRODUCTION OF OIL OR NATURAL GAS FROM A WELL DRILLED AFTER DECEMBER 31, 1998, OR THE FIRST 18 MONTHS OF PRODUCTION OF OIL OR NATURAL GAS FROM A HORIZONTALLY COMPLETED WELL DRILLED AFTER DECEMBER 31, 1998. IT MAY ALSO MEAN A WELL THAT HAS NOT PRODUCED OIL OR NATURAL GAS DURING THE FIVE YEARS IMMEDIATELY PRECEDING THE FIRST MONTH OF QUALIFYING PRODUCTION. QUALIFYING PRODUCTION DOES NOT INCLUDE OIL PRODUCTION FROM A HORIZONTALLY RECOMPLETED WELL.

AUTH: 15-36-322, MCA

IMP: 15-36-304, MCA

42.25.1810 DISTRIBUTION (1) The department will determine whether tax payments received are for production ~~occurring prior to January 1, 2000,~~ FROM PRE-1999 WELLS or are for production ~~occurring after December 31, 1999~~ FROM POST-1999 WELLS. Tax payments will be allocated between the state and local government and schools as provided in Table I of this rule. The portion of money allocated to the state will be distributed as provided in Table I. The portion of money allocated to local governments and schools will be distributed

as provided in (1)(a) and (b) below.

(a) If the tax payment is for production ~~occurring prior to January 1, 2000~~ FROM PRE-1999 WELLS all the proceeds will be distributed to local government entities as follows:

(i) 95% of the locally-distributed portion shall be returned to the county treasurers to be distributed in the same manner as property taxes were distributed in the preceding fiscal year to the applicable taxing jurisdictions based on the origin of production.

(ii) 5% of the locally-distributed portion shall be returned to the county treasurers for distribution to taxing jurisdictions in the same manner as property taxes were distributed in fiscal year 1990. The department will calculate the amount due to each levy district based on its relative share of revenue loss resulting from the change from the unit value to the liability system of distribution for local taxes on pre-1985 production, if a liability distribution had existed during calendar year 1997. The share of the 5% distribution for each levy district is fixed; however, the total 5% distribution pool will change depending on overall revenue collections.

(b) If the tax payment is for production ~~occurring after December 31, 1999~~, FROM POST-1999 WELLS all the proceeds will be distributed to counties and local schools as follows: 100% of the locally-distributed portion shall be returned to the county treasurers to be distributed in the same manner as property taxes were distributed in the preceding fiscal year to the applicable taxing jurisdictions based on the origin of production.

(c) remains the same as proposed.

Tables I and II remain the same as proposed.

AUTH: 15-36-322, MCA

IMP: 15-36-324, MCA

6. The Department has adopted new rule I (42.25.1814) and amended ARM 42.25.1810 with the amendments listed above and the Department has amended ARM 42.25.1801, 42.25.1803, 42.25.1804, 42.25.1806, 42.25.1807, 42.25.1808, 42.25.1809, and 42.25.1813 as proposed.

/s/ Cleo Anderson

CLEO ANDERSON

Rule Reviewer

/s/ Mary Bryson

MARY BRYSON

Director of Revenue

Certified to Secretary of State May 15, 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 December 31, 1999. This table includes those rules adopted during the period January 1, 2000 through March 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 December 31, 1999, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1999 and 2000 Montana Administrative Registers.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in April 2000, appear. Vacancies scheduled to appear from June 1, 2000, through August 31, 2000, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of May 9, 2000.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM APRIL, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Athletics (Commerce) Ms. Anita Vandolah Conrad Qualifications (if required): public member	Governor	reappointed	4/25/2000 4/24/2003
Board of Regents of Higher Education (Governor) Mr. Mark Semmens Great Falls Qualifications (if required): Independent from District 3	Governor	Davison	4/25/2000 2/1/2007
Governor's Upper Yellowstone River Task Force (Governor) Mr. David Haug Livingston Qualifications (if required): representing the Park Conservation District	Governor	Davis	4/7/2000 6/28/2001
MSU Billings Executive Board (Governor) Ms. Carolyn Ennis Billings Qualifications (if required): public member	Governor	reappointed	4/17/2000 4/15/2003
MSU Northern Executive Board (Governor) Ms. Judy Greenwood Havre Qualifications (if required): public member	Governor	reappointed	4/17/2000 4/15/2003
Montana Consensus Council's Board of Directors (Governor) Mr. Cary Hegreberg Townsend Qualifications (if required): public member	Governor	Snezek	4/3/2000 6/30/2001
Sen. Bob Keenan Bigfork Qualifications (if required): public member	Governor	Ohs	4/3/2000 6/30/2001

BOARD AND COUNCIL APPOINTEES FROM APRIL, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Consensus Council's Board of Directors (Governor) cont. Mr. Mat Millenbach Billings Qualifications (if required): public member	Governor	Hamilton	4/3/2000 6/30/2001
Montana State University Executive Board (Governor) Ms. Sue Leigland Bozeman Qualifications (if required): public member	Governor	reappointed	4/17/2000 4/15/2003
Montana Tech of the University of Montana (Governor) Ms. Carol Vega Butte Qualifications (if required): public member	Governor	reappointed	4/17/2000 4/15/2003
Montana Wolf Management Advisory Council (Governor) Mr. Terry Beaver Helena Qualifications (if required): public member	Governor	not listed	4/28/2000 4/28/2002
Dr. Charles E. Buehler Butte Qualifications (if required): public member	Governor	not listed	4/28/2000 4/28/2002
Mr. James Cross Kalispell Qualifications (if required): public member	Governor	not listed	4/28/2000 4/28/2002
Ms. Darlyne Dascher Fort Peck Qualifications (if required): public member	Governor	not listed	4/28/2000 4/28/2002

BOARD AND COUNCIL APPOINTEES FROM APRIL, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Wolf Management Advisory Council (Governor) cont.			
Mr. Hank Fischer	Governor	not listed	4/28/2000
Missoula			4/28/2002
Qualifications (if required):	public member		
Rep. Chase Hibbard	Governor	not listed	4/28/2000
Helena			4/28/2002
Qualifications (if required):	public member		
Ms. Robin Hompesch	Governor	not listed	4/28/2000
Bozeman			4/28/2002
Qualifications (if required):	public member		
Mr. Jay Kirkpatrick	Governor	not listed	4/28/2000
Billings			4/28/2002
Qualifications (if required):	public member		
Mr. Bruce Malcolm	Governor	not listed	4/28/2000
Emigrant			4/28/2002
Qualifications (if required):	public member		
Mr. Ira Newbreast	Governor	not listed	4/28/2000
Browning			4/28/2002
Qualifications (if required):	tribal representative		
Mr. Bruce Tutvedt	Governor	not listed	4/28/2000
Kalispell			4/28/2002
Qualifications (if required):	public member		
Dr. Nelson Wert	Governor	not listed	4/28/2000
Townsend			4/28/2002
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM APRIL, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Public Employees' Retirement Board (Administration)			
Mr. Terry Teichrow	Governor	not listed	4/1/2000
Helena			4/1/2005
Qualifications (if required):	public employee		
University of Montana Executive Board (Governor)			
Mr. Leonard Landa	Governor	reappointed	4/17/2000
Missoula			4/15/2003
Qualifications (if required):	public member		
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Governor)			
Mr. Tom Bugni	Governor	not listed	4/26/2000
Butte			4/26/2002
Qualifications (if required):	member of the public active in conservation or recreation		
Mr. Matt Clifford	Governor	not listed	4/27/2000
Missoula			4/26/2002
Qualifications (if required):	representative of a non-profit organization		
Mr. Rob Collins	Governor	not listed	4/26/2000
Helena			4/26/2002
Qualifications (if required):	representative of the Natural Resource Damage Litigation		
Mr. Jim Flynn	Governor	not listed	4/26/2000
Anaconda			4/26/2002
Qualifications (if required):	businessperson		
Mr. Pat Graham	Governor	not listed	4/26/2000
Helena			4/26/2002
Qualifications (if required):	Director of the Department of Fish, Wildlife, and Parks		

BOARD AND COUNCIL APPOINTEES FROM APRIL, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Governor) cont.			
Ms. Kathleen Hadley Deer Lodge	Governor	not listed	4/26/2000 4/26/2002
Qualifications (if required): local natural resource scientist			
Mr. Bruce Hall Milltown	Governor	not listed	4/26/2000 4/26/2002
Qualifications (if required): local planner or local development specialist			
Commissioner Gail Jones Deer Lodge	Governor	not listed	4/26/2000 4/26/2002
Qualifications (if required): local government representative			
Mr. Jack Lynch Butte	Governor	not listed	4/26/2000 4/26/2002
Qualifications (if required): local government representative			
Dr. Pat Munday Walkerville	Governor	not listed	4/26/2000 4/26/2002
Qualifications (if required): engineer			
Ms. Mary Seccombe Butte	Governor	not listed	4/26/2000 4/26/2002
Qualifications (if required): conservation district representative			
Mr. Mark A. Simonich Helena	Governor	not listed	4/26/2000 4/26/2002
Qualifications (if required): Director of the Department of Environmental Quality			

BOARD AND COUNCIL APPOINTEES FROM APRIL, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Governor) cont.			
Ms. Sally Johnson	Governor	not listed	4/26/2000
Missoula			4/26/2002
Qualifications (if required): member of the public who does not represent one of the above			
Western Montana College of the University of Montana (Governor)			
Ms. Evelyn Ann Lohman	Governor	Harrington	4/17/2000
Dillon			4/15/2003
Qualifications (if required): public member			
Youth Justice Advisory Council (Justice)			
Mr. Brock Albin	Governor	not listed	4/3/2000
Bozeman			6/14/2001
Qualifications (if required): representative of a non-fulltime government position			
Mr. Duane Piapot	Governor	Fekete	4/3/2000
Box Elder			6/14/2001
Qualifications (if required): youth representative			
Ms. Katie Yother	Governor	Williams	4/3/2000
Miles City			6/14/2001
Qualifications (if required): youth representative			

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2000 through AUGUST 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Advisory Council on Community Service (Governor) Ms. Nancy Coopersmith, Helena Qualifications (if required): representing K-12 Education	Governor	7/1/2000
Ms. Gertrude Downey, Butte Qualifications (if required): representing private citizens	Governor	7/1/2000
Mr. George Dennison, Missoula Qualifications (if required): representing higher education	Governor	7/1/2000
Mr. Joseph Lovelady, Helena Qualifications (if required): representing volunteer organizations	Governor	7/1/2000
Major Joel Cusker, Helena Qualifications (if required): representing Department of Military Affairs	Governor	7/1/2000
Ms. Kathy Ramirez, Helena Qualifications (if required): representing private citizens	Governor	7/1/2000
Aging Advisory Council (Public Health and Human Services) Mr. Dwight MacKay, Billings Qualifications (if required): public member from Region II	Governor	7/18/2000
Ms. Roberta Feller, Stockett Qualifications (if required): public member from Region X	Governor	7/18/2000
Ms. Eloise England, Dupuyer Qualifications (if required): public member from Region VII	Governor	7/18/2000
Board of Funeral Services (Commerce) Mr. John Michelotti, Billings Qualifications (if required): mortician	Governor	7/1/2000

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2000 through AUGUST 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Hearing Aid Dispensers (Commerce) Mr. Dudley Anderson, Missoula Qualifications (if required): licensed hearing aid dispenser	Governor	7/1/2000
Board of Landscape Architects (Commerce) Mr. Jim Foley, Billings Qualifications (if required): licensed landscape architect	Governor	7/1/2000
Board of Nursing (Commerce) Ms. Jean E. Ballantyne, Billings Qualifications (if required): registered nurse with teaching experience	Governor	7/1/2000
Board of Pharmacy (Commerce) Mr. Wayne Hedman, Hamilton Qualifications (if required): pharmacist	Governor	7/1/2000
Board of Physical Therapy Examiners (Commerce) Ms. Christine Jensen, Clinton Qualifications (if required): public member	Governor	7/1/2000
Board of Private Security Patrol Officers and Investigators (Commerce) Mr. Gary Racine, Cut Bank Qualifications (if required): representing a county sheriff's department	Governor	8/1/2000
Board of Radiologic Technologists (Governor) Ms. Jane Christman, Dutton Qualifications (if required): radiologic technologist	Governor	7/1/2000
Board of Research and Commercialization Technology (Commerce) Mr. Gary Buchanan, Billings Qualifications (if required): none specified	President of the Senate	7/1/2000

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2000 through AUGUST 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Sanitaricians (Commerce) Ms. Denise Moldroski, Superior Qualifications (if required): registered sanitarian	Governor	7/1/2000
Board of Veterinary Medicine (Commerce) Dr. Deborah Yarborough, Kalispell Qualifications (if required): veterinarian	Governor	7/31/2000
Ms. Mary Hinebauch, Rosebud Qualifications (if required): public member	Governor	7/31/2000
Burial Preservation Board (Indian Affairs) Mr. Duncan Standing Rock Sr., Box Elder Qualifications (if required): representing the Chippewa-Cree Tribe	Governor	8/22/2000
Mr. Gilbert Horn, Harlem Qualifications (if required): representing the Gros Ventre Tribe	Governor	8/22/2000
Mr. Mickey Nelson, Helena Qualifications (if required): representing the Montana Coroner's Association	Governor	8/22/2000
Committee on Telecommunications Access Services for Disabled (Public Health and Human Services) Mr. Eric Eck, Helena Qualifications (if required): representing the Montana Public Service Commission	Governor	7/1/2000
Mr. Norman Eck, Helena Qualifications (if required): representing senior citizens and is not handicapped	Governor	7/1/2000
Ms. Sheri Devlin, Billings Qualifications (if required): representing the Department of Public Health and Human Services	Governor	7/1/2000

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2000 through AUGUST 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Committee on Telecommunications Access Services for Disabled (Public Health and Human Services) cont. Ms. Barbara Ranf, Helena Qualifications (if required): representing the largest exchange carrier in Montana	Governor	7/1/2000
Family Education Savings Program Oversight Committee (Commissioner of Higher Education) Ms. Lois A. Menzies, Helena Qualifications (if required): State Treasurer	Governor	7/1/2000
Governor's Council on Disability (Administration) Mr. Bill Roberts, Helena Qualifications (if required): public member	Governor	8/12/2000
Mr. James Meldrum, Helena Qualifications (if required): public member	Governor	8/12/2000
Mr. Michael Regnier, Missoula Qualifications (if required): public member	Governor	8/12/2000
Mr. Peter Leech, Missoula Qualifications (if required): public member	Governor	8/12/2000
Ms. Mary Morrison, Missoula Qualifications (if required): public member	Governor	8/12/2000
Governor's Council on Families (Public Health and Human Services) Judge Katherine "Kitty" Curtis, Columbia Falls Qualifications (if required): public member	Governor	8/12/2000
Rep. Loren Soft, Billings Qualifications (if required): public member	Governor	8/18/2000

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2000 through AUGUST 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Families (Public Health and Human Services) cont. Mr. Kirk Astroth, Belgrade Qualifications (if required): public member	Governor	8/12/2000
Historical Society Board of Trustees (Historical Society) Mr. John Burke, Butte Qualifications (if required): public member	Governor	7/1/2000
Ms. Ana Brenden, Scobey Qualifications (if required): public member	Governor	7/1/2000
Mr. Jack Hayne, Dupuyer Qualifications (if required): public member	Governor	7/1/2000
Microbusiness Advisory Council (Commerce) Mr. David T. Bond, Whitefish Qualifications (if required): microbusiness owner	Governor	6/30/2000
Montana Mint Committee (Agriculture) Mr. Philip Clarke, Columbia Falls Qualifications (if required): mint grower	Governor	7/1/2000
Mr. Bruce Tutvedt, Kalispell Qualifications (if required): mint grower	Governor	7/1/2000
Montana Special Education Advisory Panel (Office of Public Instruction) Sen. Debbie Shea, Butte Qualifications (if required): legislator and parent of a child with disabilities	Director	6/30/2000
Ms. Mary Ann Akers, Helena Qualifications (if required): state agency	Director	6/30/2000

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2000 through AUGUST 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Special Education Advisory Panel (Office of Public Instruction) cont. Mr. Wallace Melcher, Helena Qualifications (if required): parent of a child with disabilities	Director	6/30/2000
Ms. Judith Oberst, Helena Qualifications (if required): parent of a child with disabilities	Director	6/30/2000
Montana Wheat and Barley Committee (Agriculture) Mr. Duane Arneklev, Plentywood Qualifications (if required): Democrat from District I	Governor	8/20/2000
Mr. Dan DeBuff, Shawmut Qualifications (if required): Republican from District V	Governor	8/20/2000
Montana Y2K Readiness Council (Administration) Mr. Jim Ereaux, Pablo Qualifications (if required): representing the Montana Native American community	Governor	6/30/2000
Mr. Michael Strand, Helena Qualifications (if required): representing telecommunications co-ops	Governor	6/30/2000
Mr. Gordon Morris, Helena Qualifications (if required): representing Montana Association of Counties	Governor	6/30/2000
Mr. Jim Greene, Helena Qualifications (if required): representing the Disaster and Emergency Services Division	Governor	6/30/2000
Lt. Governor Judy Martz, Helena Qualifications (if required): representing the State of Montana	Governor	6/30/2000
Mr. Bob Anderson, Helena Qualifications (if required): representing the Montana Public Service Commission	Governor	6/30/2000

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2000 through AUGUST 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Petroleum Tank Release Compensation Board (Environmental Quality) Ms. Mary Ann Sharon, Dillon Qualifications (if required): public member	Governor	6/30/2000
Risk Management Advisory Council (Administration) Mr. Gary Managhan, Helena Qualifications (if required): representing the Secretary of State's Office	Governor	8/26/2000
Ms. Karen Munro, Helena Qualifications (if required): representing the Department of Justice	Governor	8/26/2000
Mr. Bruce Swick, Helena Qualifications (if required): representing the Department of Natural Resources and Conservation	Governor	8/26/2000
Ms. Geralyn Driscoll, Helena Qualifications (if required): representing the Office of Public Instruction	Governor	8/26/2000
Ms. Donna Campbell, Helena Qualifications (if required): representing the Department of Fish, Wildlife, and Parks	Governor	8/26/2000
Mr. Forest Farris, Helena Qualifications (if required): representing the Department of Environmental Quality	Governor	8/26/2000
Mr. Thomas H. Gibson, Bozeman Qualifications (if required): representing the University System	Governor	8/26/2000
Mr. Bob Person, Helena Qualifications (if required): representing the Office of Legislative Services	Governor	8/26/2000
Ms. Cathy Muri, Helena Qualifications (if required): representing the Governor's Office	Governor	8/26/2000

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2000 through AUGUST 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Risk Management Advisory Council (Administration) cont. Mr. Michael Buckley, Helena Qualifications (if required): representing the Department of Transportation	Governor	8/26/2000
Mr. Patrick A. Chenovick, Helena Qualifications (if required): representing the Montana Judiciary	Governor	8/26/2000
Ms. Barb Charlton, Helena Qualifications (if required): representing the Department of Commerce	Governor	8/26/2000
Ms. Laura Calkin, Helena Qualifications (if required): representing the Public Service Commission	Governor	8/26/2000
State Banking Board (Commerce) Ms. Barbara Skelton, Butte Qualifications (if required): public member	Governor	7/1/2000
Tourism Advisory Council (Commerce) Mr. Ed Henrich, Anaconda Qualifications (if required): representing Gold West Country	Governor	7/1/2000
Mr. Tim Prather, Red Lodge Qualifications (if required): representing Yellowstone Country	Governor	7/1/2000
Ms. Donna Madson, West Yellowstone Qualifications (if required): representing Yellowstone Country	Governor	7/1/2000
Western Interstate Commission on Higher Education (Education) Mr. Francis J. Kerins, Helena Qualifications (if required): public member	Governor	6/19/2000