

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of new rules for	)	ON PROPOSED ADOPTION OF
Nondiscrimination-Equal	)	NEW RULES FOR
Employment Opportunity and	)	NONDISCRIMINATION-EQUAL
the repeal of ARM 2.21.1301	)	EMPLOYMENT OPPORTUNITY
through 2.21.1307, and	)	AND THE REPEAL OF ARM
2.21.1311 in the Sexual	)	2.21.1301 THROUGH
Harassment Prevention policy,	)	2.21.1307 AND 2.21.1311
and repeal of ARM 2.21.8107	)	IN THE SEXUAL HARASSMENT
through 2.21.8109 in the	)	PREVENTION POLICY AND
Equal Employment Opportunity	)	REPEAL OF ARM 2.21.8107
policy	)	THROUGH 2.21.8109 IN THE
	)	EQUAL EMPLOYMENT
	)	OPPORTUNITY POLICY

TO: All Concerned Persons

1. On November 17, 2000, at 9:00 a.m., a public hearing will be held in Room 136, Mitchell Building, 125 N. Roberts Street, Helena, Montana to consider the proposed adoption of new rules for Nondiscrimination-Equal Employment Opportunity and repeal of rules regarding the Sexual Harassment Prevention Policy and the Equal Employment Opportunity Policy.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on November 10, 2000, to advise us of the nature of the accommodation that you need. Please contact State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; telephone (406) 444-3871; TDD (406) 444-1421; FAX (406) 444-0544; e-mail hpeck@state.mt.us.

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

RULE I. SHORT TITLE (1) This subchapter may be cited as the nondiscrimination-equal employment opportunity policy.

AUTH: 2-18-102, MCA  
IMP: 2-18-102, MCA

RULE II. POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that state government:

- (a) is an equal employment opportunity employer;
- (b) does not discriminate in employment based upon race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation, or political beliefs; and

(c) implement and maintain an effective equal employment opportunity program which may include a written affirmative action plan.

(2) It is the objective of this policy to establish minimum standards for the implementation of an equal employment opportunity program for all executive branch agencies, in compliance with relevant state and federal laws, regulations, and executive orders.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

RULE III. DEPARTMENT OF ADMINISTRATION ROLE (1) The department of administration shall:

(a) develop equal employment opportunity (EEO) standards and guidelines and administrative systems to support the state EEO program;

(b) provide EEO analyses, reports, and technical assistance needed by executive branch agencies to establish EEO programs;

(c) provide follow up assistance where problem areas are identified;

(d) provide training for managers and employees; and

(e) encourage departments to make a commitment to provide training through upward mobility programs and/or through other available training programs where there is evidence that there have been barriers to employment for those classes of people who have traditionally been denied EEO.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

RULE IV. DEPARTMENT OR AGENCY ROLE (1) Each department director or agency head shall appoint an EEO officer and an Americans with Disabilities Act (ADA) coordinator for the department. All executive branch departments are covered by this policy.

(2) The EEO officer is responsible for the development of the department EEO program, which may include a written affirmative action plan. The EEO officer shall work with managers to implement the program.

(3) Each department shall develop a written policy statement that includes at a minimum EEO, ADA, and the prohibition of sexual harassment provisions and a complaint resolution procedure for internal and external dissemination. A model policy statement poster and a model complaint resolution procedure are available from state personnel division, department of administration.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

RULE V. EQUAL EMPLOYMENT OPPORTUNITY (1) The state of Montana is an equal employment opportunity employer and prohibits discrimination based on race, color, national origin, age, physical or mental disability, marital status, religion,

creed, sex, sexual orientation or political beliefs unless based on a bona fide occupational qualification (BFOQ). The state of Montana's prohibition of discrimination includes discrimination in hiring, firing, promotions, compensation, job assignments and other terms, conditions or privileges of employment.

(2) Any employee or applicant for employment with the state of Montana who believes he or she has been subjected to discrimination based upon any of these factors may contact the department EEO officer and also may contact the Montana human rights bureau and/or the federal equal employment opportunity commission. Jurisdiction to address any one of the above types of discrimination complaints varies. For example, the Montana human rights bureau does not consider discrimination complaints based on sexual orientation.

AUTH: 2-18-102, MCA  
IMP: 2-18-102, MCA

RULE VI. PRE-EMPLOYMENT INQUIRIES (1) Except as may be required by the reasonable demands of a position, for example, a BFOQ, compliance with a lawful affirmative action plan, or government reporting or record-keeping requirements, the state of Montana may not elicit information concerning race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation or political beliefs.

(2) The state of Montana may obtain information required for legitimate business purposes after employment.

AUTH: 2-18-102, MCA  
IMP: 2-18-102, MCA

RULE VII. PRE-EMPLOYMENT MEDICAL EXAMINATIONS (1) The state of Montana requires pre-employment medical examinations only when necessary to determine ability to perform the physical duties of a particular position. Any pre-employment medical examination must be job-related.

(2) The state of Montana will require a pre-employment medical examination only after a conditional offer of employment has been made to a job applicant.

(3) The state of Montana shall maintain the results of the examination in separate files which are treated as confidential, except that supervisors and managers may be informed regarding necessary restrictions and accommodations and safety personnel may be informed if a disability might require emergency treatment.

(4) The results of the examination may not be used to refuse employment or to make a distinction in employment unless a reasonable medical evaluation establishes inability of the particular applicant to safely and efficiently perform the duties of the position with reasonable accommodation, if necessary.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

RULE VIII. EQUAL PAY (1) The state of Montana may not pay unequal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility that are performed under similar working conditions. Wage differentials are permitted on factors other than sex, for example, longevity, merit, and applicant or employee qualifications.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

RULE IX. DISABILITY (1) The state of Montana does not discriminate against any applicant or employee in hiring, firing, promotions, compensation, job assignments and other terms, conditions, or privileges of employment due to physical or mental disability.

(2) The state of Montana provides reasonable accommodation to an otherwise qualified applicant or employee with a known disability that prevents the individual from participating in the application process, competing in the selection process, performing the essential functions of the job, and enjoying equal benefits and privileges of employment. An accommodation that is not effective, creates undue hardship on a department, or endangers health or safety is not a reasonable accommodation.

(3) Any otherwise qualified applicant for employment or employee with a disability who needs reasonable accommodation shall inform the department personnel officer, his or her immediate supervisor, or the department ADA coordinator of the nature of the disability and the accommodation requested. Employees with access to such information must maintain the confidentiality of the information to the extent reasonably possible and may not release the information to anyone who does not have the right or need to know.

(4) Some communicable diseases, for example, HIV/AIDS, are physical disabilities. The state of Montana does not discriminate against any applicant for employment or employee based upon communicable disease unless required to do so by the reasonable demands of the position. Prior to making any distinction based upon communicable disease, a department may evaluate:

- (a) the duration of the risk;
- (b) the nature and severity of the potential harm;
- (c) the likelihood that the potential harm will occur; and
- (d) the imminence of potential harm.

(5) A department may evaluate these factors after obtaining the reasonable medical judgments of public health officials.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA



RULE X. MATERNITY (1) The state of Montana may not discriminate against any applicant or employee in hiring, firing, promotions, compensation, job assignments and other terms, conditions or privileges of employment based upon a temporary disability resulting from pregnancy, childbirth, or related medical conditions.

(2) The state of Montana may not terminate any employee due to pregnancy or childbirth.

(3) The state of Montana shall grant a request by an employee for a reasonable leave of absence for maternity, pregnancy, childbirth, or related medical conditions. The state of Montana recognizes six calendar weeks as a reasonable period of recovery from the temporary disability due to childbirth. The state of Montana shall administer maternity leave in accordance with Montana's Disability and Maternity Policy, ARM 2.21.901, et seq., and the Family and Medical Leave Act (FMLA).

(4) The state of Montana may not require any employee to take a mandatory maternity leave for an unreasonable length of time. If absenteeism due to pregnancy becomes excessive or if a pregnant employee is incapable of performing normal job duties, a department may require the employee to take maternity leave until the employee is capable of performing normal job duties on a regular basis. Prior to requiring maternity leave, a department shall assess whether a department can make any reasonable accommodation that allows the pregnant employee to continue to work.

(5) A department shall reinstate an employee who has taken a reasonable leave of absence for maternity to her original or an equivalent job with equivalent pay and accumulated seniority and other benefits.

(6) An employee requiring maternity leave shall provide a department with reasonable notice of the expected date of leave and may be required to provide 30 days advance notice of the need to take FMLA leave. An employee returning from maternity leave shall provide a department with reasonable notice of her intent to return to work. When a department receives notice of intent to work, the department shall reinstate the employee as soon as reasonably possible.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

RULE XI. RELIGION (1) The state of Montana shall make reasonable accommodation for religious beliefs or practices. Any otherwise qualified applicant for employment or employee who requires reasonable accommodation may inform his or her immediate supervisor or the department EEO officer of the need for a religious accommodation. An accommodation that creates an undue hardship on a department is not a reasonable accommodation.

(2) All employees with access to such information shall maintain the confidentiality of the information to the extent reasonably possible and may not release the information to anyone who does not have the right or need to know.

AUTH: 2-18-102, MCA  
IMP: 2-18-102, MCA

RULE XII. SEXUAL HARASSMENT (1) Sexual harassment of employees, clients, customers, and any other persons is prohibited. It is the state of Montana policy to:

(a) provide employees with a work environment free of sexual harassment;

(b) communicate the state's sexual harassment prevention policy and reporting procedures to employees and supervisors;

(c) recognize the unique nature of complaints of sexual harassment;

(d) encourage early reporting by employees; and

(e) resolve complaints promptly, confidentially, and at the lowest management level possible.

(2) Sexual harassment includes unwelcome verbal or physical conduct of a sexual nature when:

(a) submission to the conduct is implicitly or explicitly made a term or condition of employment;

(b) submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual; or

(c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(3) Sexual harassment also includes harassment directed toward a person because of gender, a pattern of sexual favoritism, or harassment because of a person's sexual orientation.

(4) Examples of prohibited sexual harassment include, but are not limited to:

(a) propositions or pressure to engage in sexual activity;

(b) sexual assault;

(c) repeated intentional body contact;

(d) repeated sexual jokes, innuendoes, or comments;

(e) constant staring or leering;

(f) inappropriate comments concerning appearance;

(g) display of magazines, books, pictures, or electronic documents with a sexual connotation;

(h) a pattern of hiring or promoting sex partners over more qualified persons; or

(i) any harassing behavior, whether or not sexual in nature, directed toward a person because of the person's gender including, but not limited to, hazing employees working in nontraditional work environments.

AUTH: 2-18-102, MCA  
IMP: 2-18-102, MCA

RULE XIII. OTHER HARASSMENT (1) Harassment of employees, clients, customers, and any other persons because of a person's race, color, national origin, age, physical or mental disability, marital status, religion, creed, sexual orientation

or political beliefs is prohibited. It is the state of Montana policy to provide employees, clients, customers, and any other persons with a work environment free of these forms of harassment.

(2) Examples of other prohibited harassment include, but are not limited to:

(a) coercion of employees, clients, or customers in the participation or non-participation in religious activities; or

(b) ethnic slurs, repeated jokes, innuendoes, or other verbal or physical conduct because of a person's nationality, race, color, age, physical or mental disability, marital status, religion, creed, sexual orientation or political beliefs if these actions create an intimidating, hostile or offensive working environment.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

RULE XIV. RETALIATION (1) The state of Montana may not retaliate or allow, condone, or encourage others to retaliate against any applicant, or current or former employee for opposing unlawful discriminatory practices, filing a discrimination complaint and/or testifying or participating in any other manner in a discrimination proceeding.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

REASON: The proposed rules would combine several existing state policies that address discrimination. Elements from existing Equal Employment Opportunity/Affirmative Action and Sexual Harassment policies and ADA Employment and HIV Employment management memos would be combined into the proposed nondiscrimination-equal employment opportunity rules. The proposed rules also add sexual orientation as a protected group.

4. ARM 2.21.1301 through 2.21.1307, and 2.21.1311 to be repealed are on pages 2-769 through 2-722, and 2-775 of the Administrative Rules of Montana. ARM 2.21.8107 through 2.21.8109 to be repealed are on pages 2-1721 through 2-1723 of the Administrative Rules of Montana.

AUTH: Sec. 2-18-102, MCA

IMP: Sec. 2-18-102, MCA

REASON: The repeal of ARM 2.21.1301 through 2.21.1307, 2.21.1311, and 2.21.8107 through 2.21.8109 is proposed because these rules will now appear as part of the proposed nondiscrimination-equal employment opportunity rules.

5. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Department of Administration, State Personnel Division, Attention Hal Peck,

P.O. Box 200127, Helena, MT 59620-0127, e-mail hpeck@state.mt.us, no later than November 24, 2000.

6. The State Personnel Division, Department of Administration has been designated to preside over and conduct the hearing.

7. The Department of Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this department. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding personnel rules. Such written request may be mailed or delivered to Department of Administration, State Personnel Division, Attention Hal Peck, P.O. Box 200127, Helena, MT 59620-0127, faxed to the office at (406) 444-0544, or may be made by completing a request form at any rules hearing held by the Department of Administration.

/s/ Dave Ashley  
Dave Ashley, Acting Director  
Department of Administration

/s/ Dal Smilie  
Dal Smilie, Rule Reviewer

Certified to the Secretary of State October 16, 2000

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED REPEAL,
repeal of ARM 4.12.3001,	)	AMENDMENT AND ADOPTION
4.12.3003, 4.12.3007,	)	
4.12.3401, amendment of ARM	)	NO PUBLIC HEARING
4.12.3002, 4.12.3004,	)	CONTEMPLATED
4.12.3005, 4.12.3010 through	)	
4.12.3013, 4.12.3402,	)	
4.12.3403, and adoption of	)	
New Rules I through XVIII	)	
relating to seeds	)	

TO: All Concerned Persons:

1. On November 25, 2000, the Montana Department of Agriculture proposes to repeal, amend, and adopt the above stated rules relating to seeds.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on November 9, 2000, to advise us of the nature of the accommodation that you need. Please contact Gary Gingery, Administrator, Agricultural Sciences Division, Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; TDD Phone: (406) 444-4687; Fax: (406) 444-7336; or E-mail: agr@state.mt.us.

3. The rules as proposed to be repealed are:

4.12.3001 EQUIPMENT STANDARDS on pages 4-499 and 4-500 of the Administrative Rules of Montana.

AUTH: ~~80-5-206~~ 80-5-139, MCA  
IMP: ~~80-5-202~~ 80-5-139, MCA

4.12.3003 TYPES OF SEEDS THAT CONDITIONING PLANTS ARE AUTHORIZED AND LICENSED TO CLEAN on pages 4-501 and 4-502 of the Administrative Rules of Montana.

AUTH: ~~80-5-206~~ 80-5-139, MCA  
IMP: ~~80-5-202~~ 80-5-139, MCA

Reason: Sec. 80-5-206, MCA has been renumbered as 80-5-139, MCA. Sec. 80-5-202, MCA has been renumbered as 80-5-130, MCA. Rules 4.12.3001 and 4.12.3003 are being repealed because the 1999 Legislature renumbered 80-5-202, MCA and amended portions of what is now 80-5-130, MCA, removing the designation of different types of seed conditioning facilities. The Montana Seed Growers Association continues to

designate seed conditioning facilities to clean different types of certified seed.

4.12.3007 AGRICULTURAL SEED LICENSING FEES on page 4-503 of the Administrative Rules of Montana.

AUTH: ~~80-5-202, 80-5-203, 80-5-206~~ 80-5-139, MCA  
IMP: ~~80-5-202, 80-5-203 and 80-6-202~~ 80-5-139, MCA

Reason: Rule 4.12.3007 is being repealed because the 1999 Legislature renumbered 80-5-202, MCA and amended portions of what is now 80-5-130, MCA. The legislature set the fees for seed licenses and removed the rule making authority for setting license fees.

4.12.3401 LABELING OF AGRICULTURAL SEEDS on pages 4-521 and 4-522 of the Administrative Rules of Montana.

AUTH: ~~80-5-112~~ 80-5-139, MCA  
IMP: ~~80-5-102 and 80-5-104~~ 80-5-139, MCA

Reason: 80-5-102, 80-5-104 and 80-5-112, MCA have been repealed. Rule 4.12.3401 is being repealed because this rule dealt with numerous topics that have been incorporated into the 1999 changes in the seed law. These topics are addressed in the new rules VI through XVIII pertaining to the information required on a seed label.

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

4.12.3002 HANDLING PROCEDURES (1) All seed conditioning plants shall:

(a) account to the producer for all seed lots submitted to the plant. The conditioning report or scale ticket shall show gross weight of seed received, cleanout (screenings and air loss) and clean seed yield for each lot. The department ~~will exempt~~ exempts plants from ~~reporting weighing the weigh back or~~ clean seed yield if seed is treated in the same operation ~~and may contaminate to prevent contamination of the scale, food or feed;~~

(b) through (c)(iii)(C) remain the same.

(iv) retained samples for one year after the seed has been cleaned. If a problem occurs with the crop that is related to the seed cleaning or treatment, or if the producer is not satisfied with the cleaning of the seed, the samples shall be retained until all parties reach a mutual agreement or until litigation has been completed;

(A) ~~custom cereal~~ seed conditioning plants that clean only common cereal grain seeds are not required to obtain samples unless management chooses or the producer requests that samples be taken. If samples are taken, the aforementioned sample procedure shall be followed;

(B) handle each lot of seed received in such a way as to maintain its identity and prevent contamination; and

(C) remains the same.

~~(2) Seed labelers shall:~~

~~(a) attach a legible label that provides the information required under 80-5-102 MCA as amended, to each container that is offered for sale or is distributed to a retail seed dealer;~~

~~(b) provide the information required under 80-5-102 MCA as amended, along with shipping documents for bulk seed shipments or sales on seed lots shipped to another seed labeler;~~

~~(c) submit a sample label along with the application for license. Individuals who are only up-dating germination test data, by affixing a supplemental label bearing the new germination data, the date and his name and address to the package shall be exempt from the labeler licensing requirements.~~

AUTH: 80-5-112 80-5-139, MCA

IMP: 80-5-102 80-5-130 and 80-5-133, MCA

Reason: 80-5-112, MCA and 80-5-102, MCA have been repealed. The department does in fact exempt plants from the weigh back of treated seed. Seed conditioning plants that clean only common cereal grain seeds are the same plants that were previously designated as custom cereal conditioning plants. This wording change allows the same facilities to continue their appropriate operations even after the removal of the designations. The wording that was removed pertaining to seed labelers is covered in the new statute and other rules regarding labeling.

4.12.3004 HANDLING OF SCREENINGS (1) through (1)(a) remain the same.

~~(b) not after July 1, 1976, be sell sold or give given away screenings which contain prohibited noxious weed seed unless until the viability of the prohibited noxious weed seed has been destroyed, except as exempted allowed by state law for feed buyers. Agriculture producers Montana growers may request the return of their own screenings from their own production for personal use provided that screenings are transported in tightly closed containers~~7~~. To comply with this rule:~~

~~(i) to comply with this regulation, feed buyers must have a facility approved by the department that will destroy the viability of prohibited noxious weed seeds;~~

~~(ii) provision does not prevent seed conditioning plants from may utilizing utilize other facilities that are capable of destroying the viability of prohibited noxious weed seeds; and provided that the facility has been approved by the department of agriculture.~~

~~(iii) seed conditioners that sell or give away screenings are responsible for confirming that the feed buyer~~

has a facility with approved methods for destroying the viability of prohibited noxious weed seeds.

(c) be labeled if screenings are bagged, or a written notice provided to the feed buyer purchasing screenings in bulk. Such label or notice shall state: "WARNING - THESE SCREENINGS MAY CONTAIN PROHIBITED NOXIOUS WEEDS. FEED BUYERS, BY LAW, ARE RESPONSIBLE FOR DESTROYING THE VIABILITY OF THE WEED SEED PRIOR TO THE MANUFACTURE OF FEED OR FEEDING.";

(d) the viability of prohibited noxious weed seed shall be destroyed by using methods which ~~are approved~~ are evaluated and approved by the department. Such methods may include the use of a rotary grinder, a hammer mill, steam, or a combination of steam and pressure, or any other acceptable method, provided that the method used is ~~approved~~ evaluated by the department ~~of agriculture;~~ for acceptability and effectiveness; and

(e) remains the same.

(2) Screenings originating outside of Montana shall-

~~(a)~~ be conditioned to destroy the viability of all prohibited noxious weed seeds defined by state law prior to transport through the state or be transported in a tightly sealed container that will not allow the loss of the weed seeds.

AUTH: 80-5-135 and 80-5-139 ~~80-5-204~~, MCA  
IMP: 80-5-135 ~~80-5-204~~, MCA

Reason: 80-5-204, MCA has been renumbered as 80-5-135, MCA. These are changes to clean up language in the rule. "After July 1, 1976" is not a valid statement any longer. The insertion of the term "prohibited" makes the entire rule consistent using the full term at every mention. Changes in words now have the department approving and evaluating methods for destroying weed seed viability rather than approving a facility. Seed conditioners selling or giving away screenings have a responsibility to see that the buyer has an approved method for destroying the viability of prohibited noxious weed seeds.

4.12.3005 POSTING OF LICENSE (1) All licensed seed facilities shall have their license posted in a conspicuous place or shall provide proof of licensing upon request. ~~All conditioning plants shall display a poster provided by the department designating whether the facility is a first class, commercial, or custom seed conditioning plant.~~

AUTH: 80-5-139 ~~80-5-202~~, MCA  
IMP: 80-5-130 ~~80-5-202~~, MCA

Reason: The 1999 Legislature renumbered 80-5-202, MCA and amended portions of what is now 80-5-130, MCA, removing the designation of different types of seed conditioning facilities. The ability to request proof of licensing in addition to posting is applicable especially to seed dealers



that might operate without a particular facility in which to view their license.

4.12.3010 PROHIBITED NOXIOUS WEED SEEDS (1) Seeds offered for sale or sold shall not contain any of the following prohibited noxious weed seeds as designated under the Montana County Weed Act (7-22-2101(7)(a)(i), MCA).

- ~~(a) Leafy Spurge (Euphorbia ensula)~~
- ~~(b) Russian Knapweed (Centaurea repens)~~
- ~~(c) Canada Thistle (Cirsium arvense)~~
- ~~(d) Hoary Cress (Cardaria draba)~~
- ~~(e) Quackgrass (Agropyron repens)~~
- ~~(f) Perennial Sowthistle (Sonchus arvensis)~~
- ~~(g) Field Bindweed (Convolvulus arvensis)~~
- ~~(h) Dalmation Toadflax (Linaria dalmatica)~~

AUTH: 80-5-112 80-5-139, MCA  
 IMP: 80-5-105 80-5-120, MCA

Reason: 80-5-112, MCA has been repealed. Sec. 80-5-105, MCA has been renumbered as 80-5-134, MCA. Rule 4.12.3010 is amended rather than repealed because it gives that opportunity for the reader to once again be referred to the Montana County Weed Act (7-22-2101(7)(a)(i), MCA). This list is now the current list of prohibited noxious weed seeds as defined by the 1999 Legislature in 80-5-120, MCA.

4.12.3011 RESTRICTED NOXIOUS WEED SEEDS (1) The name and number of restricted weed seed must be shown on the label. until the number per pound exceeds the maximum number allowable. When the number of restricted weed seeds exceeds the allowance, the seed lot is prohibited for sale in Montana.

~~(1)~~(2) Seeds offered for sale or sold shall not contain the following restricted noxious weed seeds in quantities in excess of those listed below:

<u>Common Name</u>	<u>Species</u>	<u>No. of Seeds Per Pound</u>
<del>(a) Dyers Weed</del>	<del>(Isatis tinctoria)</del>	0
<del>(a) Quackgrass</del>	<del>(Agropyron repens)</del>	0
<del>(b) Spotted Knapweed</del>	<del>(Centaurea maculosa)</del>	0
<del>(b) Perennial Sowthistle</del>	<del>(Sonchus arvensis)</del>	0
(c) Wild Oats	(Avena fatua)	45
		of grass seed
		9 5
		of cereal <u>all other</u> seed
(d) Dodder	(Cuscuta spp.)	18 9
<del>(e) Common Crupina</del>	<del>(Crupina vulgaris)</del>	0
<del>(f) St. Johnswort</del>	<del>(Hyperium perforatum)</del>	18
<del>(g) (e) Curly Dock</del>	<del>(Rumex crispus)</del>	45
<del>(h) (f) Jointed Goatgrass</del>	<del>(Aegilops cylindrica)</del>	18 0
<del>(i) (g) Persian Darnel</del>	<del>(Lolium persicum)</del>	18 9
		<u>of grass seed</u>
		0

		<u>of all other seed</u>
(j) Diffused Knapweed	( <del>Centaurea diffusa</del> )	0
(k) Yellow Starthistle	( <del>Centaurea selstitialis</del> )	0
(l) Rush Skeletonweed	( <del>Chondrilla juncea</del> )	0
( <del>m</del> ) (h) Yellow Toadflax	(Linaria vulgaris)	9 0

AUTH: 80-5-112 80-5-139, MCA  
 IMP: 80-5-105 80-5-120, MCA

Reason: 80-5-112, MCA has been repealed. Sec. 80-5-105, MCA has been renumbered as 80-5-134, MCA. The weed seeds were removed from this list because they are all included as prohibited noxious weed seed after the changes made by the 1999 Legislature. The new weeds added, quackgrass and perennial sowthistle, were previously listed on the prohibited noxious weed seed list in ARM 4.12.3010. They are not included in the Montana County Weed Act but remain of great concern and should not be allowed in the sale of seed. The adjustments reducing the amount allowed in the allowances of seeds per pound of wild oats, dodder, jointed goatgrass, persian darnel, and yellow toadflax are to continue to combat the weed problems and reduce the restricted weed seeds being sold.

4.12.3012 CIVIL PENALTIES - ENFORCEMENT (1) and (2) remain the same.

(3) The penalty matrixes set forth in this rule establish the basic penalty value for each offense. Factors dealing with the violation may cause the matrix penalty to increase or decrease. ~~Examples of such factors would be the firm's history of compliance or non-compliance, or the extent of harm to agriculture or the environment.~~ To determine the appropriate penalty, the department may consider the gravity of the violation, degree of care exercised, and financial hardship.

AUTH: 80-5-207 80-5-139, MCA  
 IMP: ~~80-5-207 and 80-5-208~~ 80-5-120, MCA

Reason: This change makes the rule consistent with the amendments passed by the 1999 Legislature and allows the department to consider factors that are further outlined in proposed new rules.

4.12.3013 CIVIL PENALTIES - MATRIX

<u>Type of Violation</u>	1st Offense	2nd Offense	Subsequent Offenses
(1) <del>Operating without a seed license or refusal to pay the licensing fee required after being fully advised of its requirement</del>	\$100	\$300	\$1000
<u>Fail to obtain a license.</u>	<u>\$200</u>	<u>\$500</u>	

(2) <del>Misrepresenting</del> information supplied regarding exemption from licensing requirements.	\$100 <u>\$200</u>	\$300 <u>\$500</u>	\$1000
(3) <del>Distributing or offering</del> <u>for sale</u> <u>Sell or transport</u> seed lots that:			
(a) contain technical violations in labeling that do not seriously affect the quality of seed;	\$100	\$300	\$500
(b) <del>are lower in germination</del> <u>than the tolerance allows</u> <u>contain</u> <u>more than 2% common weed seeds;</u>	\$100 <u>\$200</u>	\$300 <u>\$500</u>	\$1000
(c) contain restricted <del>noxious</del> weed seed above the tolerances;	\$200	\$500	\$1000
(d) contain prohibited noxious weed seed;	\$200	\$500	\$1000
(e) <u>contain technical</u> <u>violations in labeling that</u> <u>seriously affect the quality</u> <u>of the lot of seed;</u>	\$200	\$500	\$1000
(f) <u>have expired germination</u> <u>test;</u>	\$100	\$300	\$500
(g) <u>are falsely or</u> <u>misleadingly advertised; and</u>	\$200	\$500	\$1000
(h) <u>are misbranded or</u> <u>mislabeled.</u>	\$200	\$500	\$1000
(4) <u>Sell, transport, label,</u> <u>advertise or represent seed as</u> <u>certified seed:</u>			
(a) <u>without a label issued</u> <u>by the seed certifying agency; and</u>	\$100	\$300	\$500
(b) <u>without a determination</u> <u>from the seed certifying agency</u> <u>that the seed conforms to</u> <u>standards.</u>	\$200	\$500	\$1000
(5) <u>Sell or transport seed</u> <u>that is protected under the Plant</u> <u>Variety Protection Act without:</u>			
(a) <u>authority of the owner;</u> <u>and</u>	\$200	\$500	\$1000
(b) <u>the required seed</u> <u>certification.</u>	\$200	\$500	\$1000
(6) <u>Detach, alter, deface or</u> <u>destroy a label.</u>	\$300	\$600	\$1000
(7) <u>Alter or substitute</u> <u>seed.</u>	\$300	\$600	\$1000
(8) <u>Disseminate false or</u> <u>misleading advertisement.</u>	\$300	\$600	\$1000
(9) <u>Hinder or obstruct an</u>			

<u>authorized person in performance of duties.</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$1000</u>
(10) <u>Fail to comply with a stop sale order.</u>	<u>\$1000</u>	<u>\$1000</u>	<u>\$1000</u>
(11) <u>Fail to comply with Title 80, chapter 5, Part 1, MCA or rules promulgated thereunder.</u>	<u>\$100</u>	<u>\$300</u>	<u>\$500</u>
(12) <u>Use "trace" as a substitute for required statement.</u>	<u>\$100</u>	<u>\$300</u>	<u>\$500</u>
(13) <u>Use "type" in labeling in connection with variety name.</u>	<u>\$100</u>	<u>\$300</u>	<u>\$500</u>
(14) <u>Move or use screenings in violation of 80-5-135, MCA.</u>	<u>\$200</u>	<u>\$500</u>	<u>\$1000</u>
(15) <u>Fail to pay assessment.</u>	<u>\$1000</u>	<u>\$1000</u>	<u>\$1000</u>
(16) <u>Fail to submit a report of sales.</u>	<u>\$200</u>	<u>\$500</u>	<u>\$1000</u>

AUTH: ~~80-5-207 and 80-5-208~~ 80-5-139, MCA  
IMP: ~~80-5-207 and 80-5-208~~ 80-5-136, MCA

Reason: Changes in this rule are made to provide uniformity in the implementation of changes made by the 1999 Legislature, particularly section 80-5-134, MCA. The numerous additions to the civil penalty matrix clarify the amount of a civil penalty to be assessed for the prohibitions listed in 80-5-134, MCA.

4.12.3402 SEED LABORATORY ANALYSIS FEES (1) and (2) remain the same.

AUTH: ~~80-5-112~~ 80-5-139, MCA  
IMP: ~~80-5-108 and 80-5-110~~ 80-5-126 and 80-5-128, MCA

Reason: The 1999 Legislature repealed 80-5-112, and renumbered 80-5-108 as 80-5-126 and 80-5-110 as 80-5-128, MCA.

4.12.3403 RULES AND REGULATIONS BY MONTANA STATE UNIVERSITY CERTIFICATION AGENCIES (1) and (2) remain the same.

AUTH: ~~80-5-112~~ 80-5-139, MCA  
IMP: ~~80-5-112~~ 80-5-141, MCA

Reason: The 1999 Legislature repealed Sec. 80-5-112, and placed portions into 80-5-139 and 80-5-141, MCA.

5. The proposed new rules provide as follows:

RULE I REPORTING AND ASSESSMENT OF SEED SALES (1) All out-of-state seed labelers shall report all sales of agricultural seed in Montana as defined in 80-5-131, MCA.

(2) These reports shall be on forms provided or approved by the department and must contain the gross annual sales by

type of agricultural seed sold in Montana during the 12 months (July 1 through June 30).

(3) These reports and the fee of 15 cents per \$100 in gross sales shall be due not later than July 31 of each year for the preceding 12 month period.

(4) An additional collection fee of 10 percent of the amount due but not less than \$10.00 shall be assessed to any seed labeler whose report and assessment is not received by the department by the July 31 deadline.

AUTH: 80-5-131, MCA

IMP: 80-5-131, MCA

Reason: This rule further clarifies the reporting and assessment provisions of Section 80-5-131, MCA which was enacted by the 1999 Legislature.

RULE II GRAVITY OF VIOLATIONS, DEGREE OF CARE, AND FINANCIAL HARDSHIP (1) In evaluating the gravity of a violation, the department may consider certain factors that may increase or decrease the penalty matrix value. The following are examples of gravity factors that may be considered:

- (a) the extent, type, kind, nature and severity of harm;
- (b) the potential of the violation to cause harm;
- (c) history of compliance;
- (d) timeliness in correcting a violation;
- (e) cooperation during an inspection or investigation;
- (f) the number of violations;
- (g) timely and voluntary settlement of damages; and
- (h) knowledge of the law that was violated.

(2) For purposes of implementing civil penalties, a violation has occurred if conduct is prohibited by Title 80, chapter 5, part 1, MCA regardless of the degree of care exercised. However the department may consider evidence of the degree of care exercised for the purpose of determining an appropriate penalty. The department will consider degree of care when and to the extent that a charged person presents evidence of the standard of care exercised. Such evidence will be evaluated as follows:

- (a) a violation that occurs through little or no negligence of the charged person may mitigate the penalty;
- (b) a violation that occurs through negligence may have a neutral effect; and
- (c) a violation that occurs as a result of gross negligence may enhance the penalty.

(3) In determining the applicability of the above, the following definitions apply:

- (a) "no negligence" means an inadvertent violation which was unavoidable by the exercise of reasonable care;
- (b) "negligence" means a failure to exercise reasonable care;
- (c) "reasonable care" means the degree of care that would be demonstrated by a prudent person acting in their own

concern with a knowledge of the nature and probable consequences of the act or omission; and

(d) "gross negligence" means knowing, intentional or reckless conduct.

(4) Financial hardship that could be imposed by a civil penalty may be considered by the department for purposes of mitigating a civil penalty. The department will consider financial hardship when a person submits bona fide financial information demonstrating finances and the degree of hardship that would be caused by a civil penalty. The charged person may request a reduction in a civil penalty or an alternate payment schedule. Examples of bona fide financial information include copies of income tax statements and financial statements.

AUTH: 80-5-139, MCA  
IMP: 80-5-136, MCA

Reason: This rule provides guidance to the department in the administration of civil penalties. Through the use of these guidelines, the department can better exercise uniformity and appropriate mitigation of circumstances in utilizing the civil penalty matrix.

RULE III PROCEDURES FOR COMPLAINTS (1) A person with knowledge of a violation of Title 80, chapter 5, MCA may file a complaint with the department. Complaints should be in writing and signed and should provide details about the violation. The department, upon receipt of a complaint, may proceed with an investigation; however, the lack of a signed and written complaint shall not preclude the department from investigating.

AUTH: 80-5-139, MCA  
IMP: 80-5-133, MCA

Reason: Establishment of a written procedure regarding investigation of complaints will aid the department in the use of inspections and investigations to follow up with appropriate enforcement actions.

RULE IV PUBLICATION OF VIOLATIONS (1) The department may publish, in a form it considers proper, information concerning violations of the act or violative seed analyses. Such publication will not occur until the responsible person has been given written notice of the violation by the department and has exhausted opportunities to contest.

AUTH: 80-5-139, MCA  
IMP: 80-5-138, MCA

Reason: Section 80-5-138, MCA gives the department the authority to publish names of persons licensed under the seed law. The publication of violations of the seed law is an

enforcement tool to help deter further violations. This rule assures that a violator will be given ample opportunity to contest before any publication.

RULE V DEFINITIONS As used in this sub-chapter, unless the context requires otherwise, the following definitions apply:

(1) "Coated or encrusted seed" means seed that has been covered by a layer(s) of materials that obscure the original shape and size of the seed resulting in a substantial weight increase. The coating or encrusting may contain biologicals, identifying colorants or dyes, pesticides, polymers and/or other ingredients.

(2) "Film-coated seed" means seed that retains the shape and the general size of the raw seed with a minimal weight gain. The film coating may contain biologicals, identifying colorants or dyes, pesticides, polymers and/or other ingredients. The coating shall result in a continuous covering.

(3) "Hermetically sealed seed" means seed packed in a moisture proof container when the container and the seed in the container meet the requirements specified by the suggested rules and regulations of the Montana State Seed Law.

(4) "Inoculated seed" means seed which has received a coating of a preparation containing a microbial product, e.g. *Rhizobium* sp.

(5) "Official sample" means a sample taken from a lot of seed by a representative of a seed regulatory official of a state or federal government agency following prescribed methods.

(6) "Pelleted seed" means coated or encrusted seed that also improves the plantability or singulation of the seed.

(7) "Pesticide treated seed" means seed with a covering of material(s) whose objective is to reduce or control disease organisms, insects or other pests attacking the seed or seedlings growing therefrom and may contain identifying colorants or dyes.

AUTH: 80-5-139, MCA

IMP: 80-5-123, MCA

Reason: This rule defines terms for understanding of wording used throughout new rules VI through XVIII.

RULE VI TREATED OR INOCULATED SEED (1) In addition to the label requirements of 80-5-123, MCA for all agricultural, vegetable, flower and indigenous seeds which have been treated as defined in 80-5-120, MCA, or inoculated as defined in [Rule V], a label containing the following information shall be affixed or accompany the lot:

(a) a word or statement indicating that the seed has been treated;

(b) the commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used;

(c) if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as "do not use for food, feed, or oil purposes." The caution for toxic substances shall be a poison statement or symbol; and

(d) if the seed is inoculated, the date beyond which the inoculant is not to be considered effective (date of expiration).

AUTH: 80-5-139, MCA

IMP: 80-5-123, MCA

Reason: This rule provides one place to access information of additional label requirements beyond 80-5-123, MCA for seed that will be treated or inoculated.

RULE VII VIABILITY INFORMATION (1) All seed shall be labeled with information that indicates the viability of the seed. This information shall be in one of the following formats as further stated in these rules for different types of seed:

(a) the calendar month and year the test was completed to determine the viability information percentages;

(b) the year for which the seed was packed for sale; or

(c) the date by which the seed must be sold.

(2) Seed sold or offered for sale must have current viability information as required by 80-5-134(1)(d), MCA. Seed shall not be sold more than 12 months after the calendar month and year in which the test for the viability information for that seed was completed.

(3) As stated in procedures such as the Federal Seed Act and the rules for testing seeds by the association of official seed analysts, the following tests are approved for determining viability:

(a) germination as prescribed for the seed kinds being tested;

(b) hard seeds as prescribed for the seed kinds being tested; and

(c) dormancy as determined by tetrazolium testing.

(4) A seed dealer may use the label of the seed labeler without changing the name for a period of 12 months following the month in which the viability test was completed, provided that label complies with the Montana labeling requirements and that it is attached to the original container. After this period, viability information must be updated.

(5) A supplemental label must be attached to the container or affixed to the original label showing new viability information and the name and address of the person who affixed the supplemental label. Not more than one supplemental label shall be visible.



AUTH: 80-5-139, MCA  
IMP: 80-5-123, MCA

Reason: This rule clarifies the formats for reporting viability information on tags, requires current information and establishes the testing methods to be used in determining the information for viability labeling.

RULE VIII LABELING FOR SEED KIND AND VARIETY

(1) Agricultural seeds shall be labeled with kind and variety information as stated in this rule:

(a) the following agricultural seeds shall be labeled to show kind and variety:

- (i) barley;
- (ii) bean, field;
- (iii) beet, field;
- (iv) canola;
- (v) corn, field;
- (vi) oats;
- (vii) peas, field;
- (viii) safflower;
- (ix) soybean;
- (x) sunflower; and
- (xi) wheat.

(b) the following agricultural seeds shall be labeled to show the kind and variety name or the kind and the words "variety not stated" (VNS):

- (i) alfalfa;
- (ii) brome, smooth;
- (iii) clover, crimsonflax;
- (iv) clover, red;
- (v) clover, white;
- (vi) corn, pop;
- (vii) fescue, tall;
- (viii) millet;
- (ix) foxtail;
- (x) pea, forage;
- (xi) rye;
- (xii) sorghum;
- (xiii) sorghum-sudan, hybrid;
- (xiv) sudan grass; and
- (xv) trefoil, birdsfoot.

(c) any kind of agricultural seed not listed in (1)(a) or (b) above may be stated as kind only or as kind and variety.

(2) If the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety." The percentage in this case may be shown as "pure seed" and shall apply only to seed of the variety named. If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" shall be clearly associated with the respective percentages. When two or more varieties are present in excess of 5% and are named on the label, the name

of each variety shall be accompanied by the percentage of each.

AUTH: 80-5-139, MCA  
IMP: 80-5-123, MCA

Reason: This rule provides the labeling requirement of variety in addition to kind for numerous agricultural seeds. This information provides the consumer with the necessary information to determine if the seed is suited for their needs.

RULE IX AGRICULTURAL SEED LABEL REQUIREMENTS

- (1) Agricultural seeds that are not more specifically categorized in this sub-chapter shall be labeled with the:
- (a) name and mailing address of the seed labeler;
  - (b) lot number or other lot identification mark;
  - (c) name of the kind and variety, except as provided for in [Rule VIII], for each agricultural seed component present in excess of 5% of the whole and the percentage by weight of each. Hybrids shall be labeled as hybrids;
  - (d) state or foreign country of origin for each named agricultural seed. If the origin is unknown, the fact shall be stated;
  - (e) percentage by weight of all weed seeds;
  - (f) name and rate of occurrence per pound of each kind of restricted weed seed present;
  - (g) percentage by weight of other crop seeds;
  - (h) percentage by weight of inert matter; and
  - (i) viability information for each named agricultural seed:
    - (i) percentage of germination, exclusive of hard or dormant seed;
    - (ii) percentage of hard seeds may be stated, if present;
    - (iii) percentage of dormant seed may be stated, if present, and the test used to determine dormancy;
    - (iv) following (1)(i)(i), (ii), and (iii), the terms "total germination and hard and/or dormant seed" or "total viable" may be used in accordance with this subsection;
    - (v) as an alternative to (1)(i)(i) through (iv), the label may give the percentage of viable seeds as determined by methods approved by department rule. The method used to determine viability shall be stated on the label; and
    - (vi) calendar month and year the test was completed to determine such percentages.

AUTH: 80-5-139, MCA  
IMP: 80-5-123, MCA

Reason: This rule provides the labeling requirements for agricultural seed including purity and viability information. This uniformity will provide the consumer the best available information to make a seed purchase decision.

RULE X LABELING SEED MIXTURES FOR LAWN AND TURF PURPOSES

(1) Agricultural seed mixtures for lawn and turf purposes shall be labeled with the:

- (a) name and mailing address of the seed labeler;
- (b) lot number or other lot identification mark;
- (c) commonly accepted name of kind or kind and variety of each agricultural seed component in excess of 5% of the whole, and the percentage by weight of pure seed in order of its predominance and in columnar form;
- (d) word "mix" or derivation thereof stated with the name of the mixture;
- (e) headings such as "pure seed," "germination," or "germ" in the proper places;
- (f) state or foreign country of origin for each named agricultural seed. If the origin is unknown, the fact shall be stated;
- (g) percentage by weight of all weed seeds;
- (h) name and rate of occurrence per pound of each kind of restricted weed seed present;
- (i) percentage by weight of other crop seeds;
- (j) percentage by weight of inert matter. Inert matter shall not exceed 10% by weight. Except for coating material, fertilizer and mulch as provided for in this sub-chapter, foreign material not common to grass seed shall not be added; and
- (k) viability information for each named agricultural seed:
  - (i) percentage of germination, exclusive of hard or dormant seed;
  - (ii) percentage of hard seeds may be stated, if present;
  - (iii) percentage of dormant seed may be stated, if present, and the test used to determine dormancy;
  - (iv) following (1)(k)(i), (ii) and (iii), the terms "total germination and hard and/or dormant seed" or "total viable" may be used in accordance with this subsection; and
  - (v) calendar month and year the test was completed to determine such percentages, the year for which the seed was packed for sale, or the sell by date.

(2) The labeling requirements for seed mixtures for lawn and/or turf purposes in containers of more than one pound shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.

AUTH: 80-5-139, MCA

IMP: 80-5-123, MCA

Reason: This rule will benefit consumers by requiring seed mixture information in the order of the largest of percentage of seed at the top of the label as well as the requirements for purity and viability information.

RULE XI AGRICULTURAL SEED SOLD ON A PURE LIVE SEED BASIS

(1) Each container of agricultural seeds that is sold on a pure live seed basis in accordance with the Act and these

rules must bear a label containing the information required in [Rule IX] with the following exceptions:

- (a) the label need not show:
  - (i) the percentage by weight of each agricultural seed component as required by [Rule IX]; or
  - (ii) the percentage by weight of inert matter as required by [Rule IX]; and
- (b) the label must show for each named agricultural seed, instead of the information required by [Rule IX]:
  - (i) the percentage of pure live seed determined in accordance with the Act and these rules; and
  - (ii) the calendar month and year in which the test determining the percentage of pure live seed was completed.

AUTH: 80-5-139, MCA  
IMP: 80-5-123, MCA

Reason: This rule will allow labeling on a pure live seed basis providing the grower another method to compare different lots of seed.

RULE XII AGRICULTURAL SEEDS THAT ARE COATED (1) In addition to the applicable agricultural seed labeling requirements, agricultural seeds that are coated shall be labeled with the:

- (a) percentage by weight of pure seeds with coating material removed;
- (b) percentage by weight of coating material;
- (c) percentage by weight of inert material exclusive of coating material; and
- (d) percentage of germination determined on 400 pellets with or without seeds.

AUTH: 80-5-139, MCA  
IMP: 80-5-123, MCA

Reason: This rule will require that labeling the proper percentage of germination for seeding situations be based upon a set number of pellets with or without seeds. Coating seeds assists in the flowability of some seed types in today's equipment but could provide false information based only on pellet numbers and not germination percentages.

RULE XIII AGRICULTURAL SEEDS PLACED IN A GERMINATION MEDIUM OR OTHER DEVICE (1) In addition to the applicable agricultural seed labeling requirements, agricultural seeds, including lawn and turf seeds, placed in a germination medium, mat, tape or other device or mixed with mulch shall be labeled with the:

- (a) product name;
- (b) percentage by weight of pure seed of each kind and variety named which may be less than 5% of the whole; and
- (c) percentage by weight of inert matter which shall not be less than 70.

AUTH: 80-5-139, MCA  
IMP: 80-5-123, MCA

Reason: This rule allows the purchaser to determine the amount of seed that is contained in the material to be used in a seedbed.

RULE XIV AGRICULTURAL AND VEGETABLE HYBRID SEED CONTAINING LESS THAN 95% HYBRID SEED (1) In addition to the applicable agricultural and vegetable seed labeling requirements, agricultural and vegetable hybrid seed which contains less than 95% hybrid seed shall be labeled with the:

- (a) kind or variety labeled as "hybrid"; and
- (b) percent hybrid stated parenthetically in direct association following named variety, i.e., Comet (85% Hybrid).

(2) Varieties in which the pure seed content is less than 75% hybrid seed shall not be labeled hybrids.

AUTH: 80-5-139, MCA  
IMP: 80-5-123, MCA

Reason: This rule provides the purchaser with information regarding the content of hybrid seed in a container.

RULE XV VEGETABLE SEEDS (1) All vegetable seeds shall be labeled with the:

- (a) name and mailing address of the seed labeler;
- (b) lot number or other lot identification mark; and
- (c) name of each kind and variety present in excess of 5% and the percentage by weight of each in order of its predominance.

(2) Vegetable seeds in packets of generally one pound or less as prepared for use in home gardens or household plantings or vegetable seeds in pre-planted containers, mats, tapes, or other planting devices shall also be labeled with the:

- (a) year for which the seed was packed for sale, the sell by date or the percentage germination and the calendar month and year the test was completed to determine such percentage; and
- (b) viability information for seeds which germinate less than the standard last established in the Federal Seed Act:
  - (i) percentage of germination, exclusive of hard or dormant seed;
  - (ii) percentage of hard seeds may be stated, if present;
  - (iii) percentage of dormant seed may be stated, if present, and the test used to determine dormancy;
  - (iv) following (2)(b)(i), (ii) and (iii), the terms "total germination and hard and/or dormant seed," or "total viable" may be used in accordance with this subsection; and
  - (v) the words "Below Standard Germination" in not less than 8-point type.

(3) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape or device, the label shall carry a statement to indicate the minimum number of seeds in the container.

(4) Vegetable seeds in containers, other than packets of generally one pound or less prepared for use in home gardens or household plantings and other than pre-planted containers, mats, tapes, or other planting devices, shall also be labeled with the viability information for each named vegetable seed:

(a) percentage of germination, exclusive of hard or dormant seed;

(b) percentage of hard seeds may be stated, if present;

(c) percentage of dormant seed may be stated, if present, and the test used to determine dormancy;

(d) following (4)(a), (b) and (c), the terms "total germination and hard and/or dormant seed" or "total viable" may be used in accordance with this subsection; and

(e) calendar month and year the test was completed to determine such percentages, the year for which the seed was packed for sale, or the sell by date.

(5) The labeling requirements for vegetable seeds shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.

AUTH: 80-5-139, MCA

IMP: 80-5-123, MCA

Reason: This rule provides for uniform labeling of vegetable seeds. Consumers are able to determine if the seed they want to purchase was packaged for the current growing season and that the seed meets minimum viability standards. Vegetable seed germination rates can decline so the consumer needs this information to use current viable seed.

RULE XVI FLOWER SEEDS (1) All flower seeds shall be labeled with the:

(a) name and mailing address of the seed labeler;

(b) lot number or other lot identification mark;

(c) name of the kind and variety or a statement of type and performance characteristics if prescribed in a specific rule; and

(d) year for which the seed was packed for sale, the sell by date or the percentage germination and the calendar month and year the test was completed to determine such percentage.

(2) The genus and species of each flower in a mix shall be furnished to the department upon request.

(3) Flower seeds in packets of generally one pound or less prepared for use in home gardens or household plantings or flower seeds in pre-planted containers, mats, tapes, or other planting devices for which standard testing procedures are established by the association of official seed analysts

and which germinate less than the germination standard last established under the provisions of the Act shall also be labeled with the:

(a) percentage of germination exclusive of hard seeds; and

(b) the words "Below Standard Germination" in not less than 8-point type.

(4) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, the label shall contain a statement to indicate the minimum number of seeds in the container.

(5) Flower seeds in containers, other than packets of generally one pound or less prepared for use in home flower gardens or household plantings and other than pre-planted containers, mats, tapes, or other planting devices and for which standard testing procedures are established by the association of official seed analysts, shall also be labeled with the:

(a) percentage of germination, exclusive of hard or dormant seed;

(b) percentage of hard seeds may be stated, if present;

(c) percentage of dormant seed may be stated, if present, and the test used to determine dormancy; and

(d) following (5)(a), (b) and (c), the terms "total germination and hard and/or dormant seed" or "total viable" may be used in accordance with this subsection.

AUTH: 80-5-139, MCA

IMP: 80-5-123, MCA

Reason: This rule provides for uniform labeling of flower seeds. Consumers are able to determine if the seed they want to purchase was packaged for the current growing season and that the seed meets minimum viability standards. Information regarding the specific genus and species of flowers can be obtained to verify that noxious weed seed is not being distributed as flower seed.

RULE XVII INDIGENOUS SEEDS (1) Indigenous seeds, whether in package or bulk, shall be labeled with the:

(a) name and mailing address of the seed labeler;

(b) lot number or other lot identification mark;

(c) statement "Labeled only for reclamation purposes";

(d) common name, genus, species, and subspecies when applicable, including the name of each kind of seed present in excess of 5%. When two or more kinds of seed are named on the label, the label shall specify the percentage of each. When only one kind of seed is present in excess of 5% and no variety name or type designation is shown, the percentage must apply to seed of the kind named. If the name of the variety is given, the name may be associated with the name of the

kind. The percentage in this case may be shown as "pure seed" and must apply only to seed of the variety named;

- (e) state or country of origin;
- (f) percentage of viable seed, together with the date of test. When labeling mixtures, the percentage viability of each kind shall be stated. The method used to determine viability shall be stated on the label;
- (g) percentage by weight of pure seed;
- (h) percentage by weight of all weed seeds;
- (i) percentage by weight of inert matter;
- (j) percentage by weight of other crop seeds; and
- (k) name and rate of occurrence per pound of each kind of restricted weed seed present.

AUTH: 80-5-139, MCA  
IMP: 80-5-123, MCA

Reason: This rule will assist contractors in the purchase of the proper seed for reclamation of repaired or disturbed areas. Disturbed areas are very subject to infestations of noxious weeds and using appropriate species of grass seed for reclamation will deter the spread or introduction of noxious weeds.

RULE XVIII COMBINATION MULCH, SEED AND FERTILIZER PRODUCTS (1) For combination mulch, seed and fertilizer products, the label shall include the word "combination" followed by the words "mulch, seed, fertilizer," or appropriate terms. These words must appear on the upper 30% of the principal display panel. The word "combination" must be the largest and most conspicuous type on the container, equal to or larger than the product name; the words "mulch, seed, or fertilizer," shall be no smaller than one-half the size of the word "combination" and close to the word "combination." These products shall contain a minimum of 70% mulch.

AUTH: 80-5-139, MCA  
IMP: 80-5-123, MCA

Reason for Rule XVIII: This rule will provide for uniform labeling of seed that contains a combination of seed, mulch and fertilizer. Consumers will be better able to compare these types of products to determine the product that best suits their needs.

Reason for Rules V through XVIII: The 1999 Legislature removed most of the wording regarding seed labeling from 80-5-123, MCA. The statute now contains the remaining wording for seed labeling. The legislature provided broad guidance on the information that should be on a seed label and left the specifics to be added by rule. In an effort to promote uniformity between states, the Association of American Seed Control Officials created the Recommended Uniform State Seed



Law (RUSSEL). The new rules proposed regarding labeling are consistent with RUSSEL. The specifics that were previously in the statutes were left basically unchanged.

6. Concerned persons may submit their data, views or arguments concerning the proposed rule changes in writing to Gary Gingery, Administrator, Agricultural Sciences Division, Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-7336; or E-mail: agr@state.mt.us, to be received no later than November 23, 2000.

7. If persons who are directly affected by the proposed rule changes 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 Gary Gingery, Administrator, Agricultural Sciences Division, Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-7336; or E-mail: agr@state.mt.us. The comments must be received no later than November 23, 2000.

8. If the Department of Agriculture receives requests for a public hearing on the proposed rule changes from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; 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 28 persons based on 280 seed dealers licensed for sale of seed in Montana.

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

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

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck  
Ralph Peck  
Director

/s/ Tim Meloy  
Tim Meloy, Attorney  
Rules Reviewer

Certified to the Secretary of State October 16, 2000.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PROPOSED
amendment of ARM 4.12.219 and )	AMENDMENT AND ADOPTION
adoption of new rules I )	
through IV relating to )	NO PUBLIC HEARING
commercial feed )	CONTEMPLATED

TO: All Concerned Persons

1. On November 25, 2000, the Montana Department of Agriculture proposes to amend and adopt the above stated rules relating to commercial feed.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on November 9, 2000, to advise us of the nature of the accommodation that you need. Please contact Gary Gingery, Administrator, Agricultural Sciences Division, Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; TDD Phone: (406) 444-4687; Fax: (406) 444-7336; or E-mail: agr@state.mt.us.

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

4.12.219 ADOPTION OF MODEL FEED AND PET FOOD REGULATIONS

(1) The Montana department of agriculture hereby adopts and incorporates by reference, ~~the~~ model feed regulations and model pet food regulations as published in the ~~1995~~ 2000 official publication of the association of American feed control officials (AAFCO). The model feed regulations are found on pages 85 through 101 and the model pet food regulations are found on pages 113 through 122 of the official AAFCO publication. A copy of the AAFCO model rules may be obtained from the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201 or the entire official publication may be obtained ~~for a cost of \$25 through the AAFCO treasurer, phone (404)656-3637.~~ The director of the Montana department of agriculture or ~~his~~ designee shall be the official recognized throughout the model regulations.

~~(2) A "customer formula feed" as used in the model rules is defined as a custom mixed feed.~~

AUTH: 80-9-103 and 80-9-204, MCA  
IMP: 80-9-101, 80-9-202, 80-9-203 and 80-9-204, MCA

Reason: Adoption of model regulations published by the Association of American Feed Control Officials (AAFCO)

provides uniformity with regulations promulgated nationally, and is consistent with rule authority of 80-9-103, MCA that the department, in the interest of uniformity, shall adopt official definitions and terms of the AAFCO. On June 30, 1995, the department adopted the 1995 version of the AAFCO model rules. The proposed amendment would adopt the year 2000 version and would therefore update and provide uniformity in Montana's commercial feed rules to the current industry standard. Additional amendments are being proposed to clarify where the adopted rules are located in the AAFCO publication and to repeal references to cost and phone numbers since these can change on a yearly basis. The department is also proposing to repeal the clarification to customer formula feed because an amendment in 1999 to Title 80, chapter 9, MCA redefined "custom mixed feed" as "customer formula feed."

4. The proposed new rules provide as follows:

RULE I DEFINITION OF COMMERCIAL FEED (1) The following definitions are for the purpose of clarifying the term "commercial feed" pursuant to 80-9-101, MCA:

(a) "chemically changed" means change in elemental composition, atomic structure, or mass which may be caused by application of heat, pressure, reactants, solvents or catalysts;

(b) "cube" means a feed product that has fibers with a typical length of about one inch, ground to a lesser degree than a pellet, and is compressed and passed through an opening of one inch or larger;

(c) "entire" means substantially complete or whole and identifiable to seed species; and

(d) "physically altered" means changes in physical characteristics such as density, shape, and color. Examples of physical alterations include grinding, removal of hulls, dry rolling, compaction, crimping, and flaking.

(2) The following feeds are exempted from the definition of commercial feed when they are not ground, are not intermixed with other materials, and are not adulterated within the meaning of 80-9-204, MCA:

(a) hay or straw that is baled, cubed or loose;

(b) litter for livestock and pets whether litter is whole plants or parts of plants;

(c) stover for litter or fodder consisting of the stalks and leaves of corn, sorghum or other plants after the ears or heads have been removed;

(d) fodder consisting of whole plants, whether green or cured, used as forage;

(e) silage;

(f) corn cobs whether whole or with kernels removed;

(g) husks and hulls including seed screenings;

(h) raw meats; and

(i) crimped, rolled or compacted entire seeds whether conditioned or steamed.

AUTH: 80-9-101 and 80-9-103, MCA  
IMP: 80-9-201, 80-9-202, 80-9-203, 80-9-204 and  
80-9-206, MCA

Reason: New Rule I is necessary in order to clarify which feeds are exempt from the definition of a "commercial feed" and thereby exempted from certain requirements of the Commercial Feed Law (Title 80, chapter 9, MCA). Clarification is being provided to 80-9-101(3), MCA that exempts seeds which are physically altered, entire seeds, and seeds that are not chemically changed. A definition of "physically altered" and "chemically changed" will assist in determining which feeds are exempted. This new rule also exempts from the definition of commercial feed specific feeds including baled and loose hay, litter, and forage. These exemptions are consistent with national standards for exempting these feeds.

RULE II ADULTERATED FEED (1) This rule clarifies references to the Federal Food, Drug, and Cosmetic Act that are included in 80-9-204, MCA to establish standards for adulterated feed. The referenced sections of the Federal Food, Drug, and Cosmetic Act are codified in the United States Codes (USC) as follows:

(a) sections 402(a)(1) and (a)(2) are codified in 21 USC 342;

(b) section 406 is codified in 21 USC 346;

(c) section 408(a) is codified in 21 USC 346a;

(d) section 409 is codified in 21 USC 348;

(e) section 512 is codified in 21 USC 360b; and

(f) section 721 is codified in 21 USC 379e.

(2) For purposes of implementing 80-9-204, MCA and determining if a feed is adulterated, the department hereby adopts and incorporates by reference the following federal regulations adopted under authority of the Federal Food, Drug, and Cosmetic Act. These regulations assist in establishing the standards for adulteration and are effective as Montana law:

(a) 21 CFR 558 - NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS;

(b) 21 CFR 573 - FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS;

(c) 21 CFR 579 - IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF ANIMAL FEED AND PET FOOD;

(d) 21 CFR 582 - SUBSTANCES GENERALLY RECOGNIZED AS SAFE;

(e) 21 CFR 584 - FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE IN FEED AND DRINKING WATER OF ANIMALS;

(f) 21 CFR 589 - SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED; and

(g) 40 CFR 186 - PESTICIDES IN ANIMAL FEEDS.

(3) A copy of these regulations may be obtained from the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201.

AUTH: Sec. 80-9-103, MCA

IMP: Sec. 80-9-204, MCA

Reason: The new rule clarifies references to sections of the Federal Food, Drug, and Cosmetic Act that are part of 80-9-203, MCA. The rule clarifies where these sections are now codified in United States Codes. The department's intent is to assist the regulated community and interested persons in locating these laws. The rule also adopts by reference sections of the Code of Federal Regulations that implement pertinent sections of the Federal Food, Drug, and Cosmetic Act. The adopted regulations establish specific standards for accepted and safe ingredients and medications in animal feed, and by doing so establish standards for adulteration. Adoption of these regulations is necessary to effectively administer and enforce 80-9-203, MCA - Adulterated Feed.

RULE III STANDARDS FOR VIABLE WEED SEEDS (1) The use of commercial feeds containing viable weed seeds can cause weed infestations with adverse economic and environmental impacts. The risk of weed infestations from commercial feeds may eventually justify the adoption of standards to define acceptable levels of viable weeds in commercial feeds. However, current scientific data on this matter are insufficient to allow the department to establish standards for weed seeds as authorized by 80-9-103, MCA. As an interim measure, and in recognition of the significance of this issue, the department is adopting this interim rule while literature research and scientific studies are being completed.

(2) Persons who manufacture animals feeds in Montana should utilize processes and ingredients that minimize, in the finished product, the presence of viable seeds of plant species designated as noxious weeds under 7-22-2101(7)(a)(i), MCA. Distributors should distribute, where feasible and practical, feeds that do not contain viable seeds of plant species designated as noxious weeds under 7-22-2101(7)(a)(i), MCA.

(3) Claims made on labels and labeling regarding freedom from viable noxious weed seeds shall be accurate and truthful. Claims such as "free from noxious weed seeds," "noxious weed seeds destroyed," and similar phrases, or claims regarding the amount of noxious weed seeds may be made when:

(a) the feed contains no viable noxious weed seeds; or  
(b) the feed has been tested for viable noxious weeds and the results of testing are accurately stated on the label or labeling.

(4) Commercial feeds shall be misbranded when:

(a) viable noxious weed seeds are present and a claim regarding weed freedom is made on the labels or labeling; or  
(b) viable noxious weed seeds are present in amounts exceeding that claimed on the label or labeling.

(5) Feed manufacturers making claims regarding freedom from noxious weed seeds shall submit, upon written request by the department, and for each product making such a claim, information that verifies the absence of viable weed seeds.

The department may request information regarding the following:

(a) analytical test results regarding seed viability, species composition, and proportion of noxious weed seeds;

(b) verification that plant materials used in manufacture did not contain viable noxious weed seeds. For purposes of this subsection, plant materials certified pursuant to Title 80, chapter 7, MCA, are recognized as meeting standards for freedom from viable noxious weed seeds; and

(c) verification that methods used in manufacturing are effective in mitigating the presence or viability of noxious weed seeds. For purposes of this subsection, pellets and cubes certified pursuant to Title 80, chapter 7, MCA or produced in accordance with standards in ARM 4.5.306 are recognized as effective in mitigating the viability of noxious weed seeds.

(6) The department will evaluate analytical methods, manufacturing methods, and other methods represented as mitigating the presence or viability of noxious weed seeds, and may make a determination regarding acceptability and effectiveness. Persons may not make claims regarding weed seeds when methods are determined to be unacceptable or ineffective.

AUTH: 80-9-103, MCA

IMP: 80-9-202, 80-9-203 and 80-9-204, MCA

Reason: Weed seeds in feeds are a recognized source of weed infestations, and are known to germinate from feeds spilled on the ground and from livestock manure. The establishment of noxious weeds and common weeds can have serious economic and environmental impacts. Section 80-9-103, MCA authorizes the department to adopt rules for "standards for viable weed seeds." These standards could apply to noxious and common weeds. However, a review of scientific literature and possible completion of research studies are needed to assess data upon which standards can be established. The data may be complex and will require consideration of a number of variables including the following:

(1) The impact of individual species of weeds to agriculture and the environment requires an assessment of distribution in Montana (presence or absence), ability to spread, management options, ease of control, and other factors.

(2) Feed manufacturing processes can affect the viability of weed seeds and, therefore, the inherent risk of spreading weeds varies with types of feeds. For example, pelleting, because of manufacturing practices that include grinding, pressure, and heat, may present a lower risk than feeds that are not subject to these processes, hay or whole seeds for example. Pet foods are highly processed and may present a low risk of spreading weed seeds.

(3) Feeding practices influence the risk of spreading

weeds. The practice of spreading hay and cubes on the ground in rangeland and pastures may have an inherent higher potential for spreading weeds than practices that involve feeding in confined locations such as feed lots and confinement operations.

(4) Some evidence suggests that relative risk is also associated with the species of animal being fed. Some species are more efficient than others in digesting whole seeds. The department is attempting to obtain funding to answer these questions with the eventual goal of developing meaningful standards that are achievable for the regulated community. As an interim measure, the department recognizes a need to address this issue and is proposing new rule III. The rule does not establish standards. It encourages manufacturers and distributors to process and sell commercial feeds that do not contain weeds of species that are designated as state noxious weeds under the county noxious weed law (7-22-2101(7)(a), MCA). Until such time that standards based on adequate scientific data are adopted, compliance with this rule is voluntary. The rule addresses those species that have a high potential for establishment, and are invaders. The rule is also consistent with the agricultural seed law that now prohibits the sale of seed that contains seeds of noxious weeds established under 7-22-2101(7)(a), MCA. The rule also recognizes marketing opportunities for persons to sell "weed free seeds" and the associated need to provide a standard for truth in labeling. To protect consumers and provide legitimacy for such statements regarding freedom from weed seeds, the department is requiring that statements be accurate and based on recognized analyses or methods.

RULE IV COMPLAINTS (1) A person with knowledge of a violation of Title 80, chapter 9, MCA, may file a complaint with the department.

(2) Complaints should be in writing and signed and should provide details about the violation.

(3) The department, upon receipt of a complaint, may proceed with an investigation; however, the lack of a signed and written complaint shall not preclude the department from investigating.

AUTH: 80-9-103, MCA  
IMP: 80-9-301, MCA

Reason: Rule IV is being proposed to assist the department in efficiently enforcing the Commercial Feed Law as required by 80-9-301, MCA. The rule accomplishes this by establishing a process for persons to file written complaints when they have knowledge of violations. Written complaints will provide the department with bona fide information and legitimate reasons for conducting inspections for cause. This benefits the agricultural community, feed consumers, and the public at large because it allows the department to address known issues and facilitates wise use of public resources.



The department will, however, investigate violations of Title 80, chapter 9, MCA whether or not a written complaint is received. This is applicable in situations where violations are discovered as a result of sampling, inspections or other routine duties; or in cases where private persons choose to not file written complaints. Filing written complaints is a voluntary action and persons may choose not to do so for a variety of reasons including conflicts of interest or privacy concerns.

RULE V PENALTIES (1) The department will select an appropriate response for each violation of the act and rules promulgated thereunder. Nothing in this rule obligates the department to assess a civil penalty or other penalty for a violation. Each violation will be considered and a response issued based on the gravity and significance of the violation, the degree of care exercised, actual or potential adverse affects from the violation, and other factors considered appropriate by the department. The response for minor violations may include written notice or written warnings.

AUTH: 80-9-103 and 80-9-303, MCA  
IMP: 80-9-303, MCA

RULE VI CIVIL PENALTY DETERMINATION (1) Each violation set forth in this rule is a separate offense. Each offense is subject to a civil penalty not to exceed \$1,000.

(2) The penalty matrix in this rule establishes the penalty amount for initial and subsequent offenses. The penalty for subsequent violations may be increased as shown in the penalty matrix for second and third violations but only if the subsequent violation occurs within two years of the preceding violation and the charged person was notified of the preceding violation and had an opportunity to remedy the violation or to exercise an appeal.

(3) Penalty amounts shown in the matrix may be decreased or increased depending upon the significance or gravity of the violation, the degree of care exercised by the offender, and the actual or potential adverse impact or effects on animals or humans.

(4) Where a penalty is assessed under (5)(z) for reoccurrence of a violation within two years, where the violation upon initial occurrence was determined to be nonsignificant and not subject to a civil penalty, the two year period will start on the date that the preceding violation occurred.

(5) Penalty matrix in dollars:

	Initial Violation	Second Violation	Subsequent Violations
(a) manufacture a commercial feed that is misbranded, technical violation	\$250	\$500	\$1,000
(b) manufacture a commercial feed that is misbranded, resulting in harm or having potential for harm	500	1,000	1,000
(c) manufacture a commercial feed that is adulterated, technical violation	500	1,000	1,000
(d) manufacture a commercial feed that is adulterated, resulting in harm or having potential for harm	1,000	1,000	1,000
(e) misbrand a commercial feed, technical violation	250	500	1,000
(f) misbrand a commercial feed, resulting in harm or potential for harm	500	1,000	1,000
(g) adulterate a feed, technical violation	500	1,000	1,000
(h) adulterate a feed, resulting in harm or potential for harm	1,000	1,000	1,000
(i) distribute misbranded feed, technical violation	50	100	250
(j) distribute misbranded feed, resulting in harm or potential for harm	100	250	500
(k) distribute adulterated feed, technical violation	100	250	500
(l) distribute adulterated feed, resulting in harm or potential for harm	250	500	1,000
(m) fail to obtain license	100	250	500
(n) fail to pay inspection fees	500	1,000	1,000
(o) fail to register pet or specialty pet food	500	1,000	1,000
(p) distribute pet or specialty pet feed that is not registered	50	100	250
(q) distribute pet or specialty pet feed for which registration was refused or cancelled	1,000	1,000	1,000
(r) fail to file annual statement	100	250	500
(s) fail to keep records of			

distribution or tonnage records	100	250	500
(t) fail to submit list of feed products, labels, labeling, promotional material, claim, analytical method, or data upon request	\$250	\$500	\$1,000
(u) submit false information on application for licensing or registration	100	250	500
(v) knowingly feed adulterated feed to animals intended for human consumption or that produce commodities for human consumption	1,000	1,000	1,000
(w) violate an embargo order	1,000	1,000	1,000
(x) fail to comply with an order	500	1,000	1,000
(y) fail to comply with rules	100	500	1,000
(z) reoccurrence of a nonsignificant violation	Warning	200	500

AUTH: 80-9-103 and 80-9-303, MCA

IMP: 80-9-303, MCA

RULE VII SIGNIFICANCE OR GRAVITY OF A VIOLATION

(1) The department in determining the amount of a civil penalty will consider the significance and gravity of a violation as required by 80-9-303, MCA. Examples of significance and gravity factors that may increase or decrease a penalty follow; they are neither inclusive or necessarily additive in substance, order presented, or number:

(a) a history of inspections with no violations may decrease a penalty. No inspection history and no record of violations may have a neutral effect on the penalty amount. A history of violations or failure to correct past violations may increase the penalty;

(b) a penalty may be decreased when a person agrees to correct a violation and follows through on an agreed upon schedule;

(c) the presence of multiple violations at an inspection may increase a penalty;

(d) a person's cooperation during an inspection or investigation may decrease a penalty. Otherwise, this factor will have a neutral effect on penalty determination;

(e) widespread scope of a violation may increase a penalty. Examples of considerations in determining scope include geographic distribution of the violation, number of persons or animals affected, the number of products involved, and the amount or number of lots involved;

(f) a person's timely and voluntary settlement of damages may decrease a penalty. This factor will be

considered when written documentation of settlement is received in the department from the charged person and the person suffering damage;

(g) a penalty may be increased upon demonstration that a person benefited economically from the violation;

(h) violations that result in harm to animals may be cause for increasing a penalty;

(i) violations that result in or have the potential to result in illegal residues in food, commodities or food-producing animals may increase the penalty amount;

(j) label violations that result in the actual or potential failure of a commercial feed to perform according to claims may increase a penalty. Examples of such label violations include deficiency in any ingredient or composition of ingredients represented by the label, misleading, incomplete or incorrect label directions, or misbranding; and

(k) a violation that results in condemnation or destruction due to adulteration or other inability to utilize a feed for its intended purpose may be cause for increasing a penalty.

AUTH: 80-9-103 and 80-9-303, MCA

IMP: 80-9-303, MCA

RULE VIII DEGREE OF CARE (1) The department will consider degree of care exercised by the charged person for purposes of decreasing or increasing civil penalty amounts:

(a) violations that occur through little or no negligence may decrease the penalty;

(b) violations that occur through negligence may have a neutral effect in either decreasing or increasing the penalty; and

(c) violations that occur as a result of gross negligence may increase the penalty.

(2) In determining the applicability of the above, the following definitions will apply:

(a) "no negligence" means an inadvertent violation which was unavoidable by the exercise of reasonable care;

(b) "negligence" means a failure to exercise reasonable care;

(c) "reasonable care" means a degree of care demonstrated with a knowledge of the nature and probable consequences of the violation that a prudent person would ordinarily exercise in acting in their own concern; and

(d) "gross negligence" means knowing, intentional or reckless conduct.

AUTH: 80-9-103 and 80-9-303, MCA

IMP: 80-9-303, MCA

Reason: New rules V through VIII establish procedures for implementing and administering amendments to the Commercial Feed Law effective on October 1, 1999. These amendments added Sections 80-9-303(1)(b) and 80-9-303(2), MCA.

Section 80-9-303(1)(b), MCA authorizes the department to assess an administrative civil penalty up to \$1,000 per violation. Section 80-9-303(2), MCA authorizes the department to adopt a civil penalty matrix that establishes the penalty amount for each type of violation and for subsequent violations. This section requires that the department, in selecting an appropriate penalty amount, consider significance or gravity of a violation, degree of care exercised by the offender, and actual or potential adverse impacts of the violation on animals or humans. The new rules are necessary to establish the department's procedures to implement these amendments.

5. Concerned persons may submit their data, views or arguments concerning the proposed rule changes in writing to Gary Gingery, Administrator, Agricultural Sciences Division, Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-7336; or E-mail: agr@state.mt.us, to be received no later than November 23, 2000.

6. If persons who are directly affected by the proposed rule changes 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 Gary Gingery, Administrator, Agricultural Sciences Division, Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-7336; or E-mail: agr@state.mt.us. The comments must be received no later than November 23, 2000.

7. If the Department of Agriculture receives requests for a public hearing on the proposed rule changes from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 67 persons based on 673 licensed feed manufacturers and dealers.

8. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, agriculture heritage program, wheat research and marketing, rural development and/or hail.

Such written request may be mailed or delivered to Gary Gingery, Administrator, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201; faxed to the office at (406) 444-7336; or E-mail: agr@state.mt.us or may be made by completing a request form at any rules hearing held by the department of agriculture.

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

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck  
Ralph Peck  
Director

/s/ Tim Meloy  
Tim Meloy, Attorney  
Rules Reviewer

Certified to the Secretary of State October 16, 2000.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PROPOSED
amendment of ARM 4.3.202, )	AMENDMENT
4.3.204, 4.3.602 and 4.3.604 )	
relating to loan )	NO PUBLIC HEARING
qualifications )	CONTEMPLATED

TO: All Concerned Persons

1. On November 25, 2000, the Montana Department of Agriculture proposes to amend above stated rules relating to loan qualifications.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on November 9, 2000, to advise us of the nature of the accommodation that you need. Please contact Lee Boyer at the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TDD: (406) 444-4687; Fax: (406) 444-9442; or E-mail: agr@state.mt.us.

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

4.3.202 QUALIFICATIONS (1) through (4) remain the same.

(5) A three member loan committee must be established in the local community from which an application is received. This committee should be composed of any three of the following: ~~vocational~~ agriculture education instructors, county extension agents, home demonstration agents, and others. Others may include agriculture representatives from their local lender following lending institutions: production credit association, federal land bank, farmers home administration, commercial banks or other individuals as approved by the department. This committee is established to pass upon the eligibility of applicants for loans and to make recommendations concerning the making and servicing of the loan proposal.

AUTH: 80-2-106, MCA  
IMP: 80-2-103, MCA

Reason: Several of the agencies listed here no longer exist. By utilizing a local lender, this will allow the applicant greater flexibility.

4.3.204 LIMITATIONS (1) remains the same.

(2) No loan shall exceed ~~\$7,000~~ \$3,500 for age nine to eleven and \$8,500 for age twelve to twenty-one for any one individual borrower or \$14,000 for any chapter or club. Loans

may be renegotiated providing the borrower does not exceed the maximum loan limits at any time-;

(a) through (5) remain the same.

AUTH: 80-2-106, MCA  
IMP: 80-2-103, MCA

Reason: The proposed changes are necessary to offer flexibility for our borrowers. A two-tiered system will provide more loans for our youth program. The change to a maximum loan of \$3,500 for ages nine to eleven will more closely match the amount of the loan to the expertise of the borrower. The increase to a maximum loan of \$8,500 for borrowers ages twelve to twenty-one will allow more mature borrowers to have larger projects than in the past.

4.3.602 QUALIFICATIONS (1) through (3) remain the same.

(4) An applicant's net worth including that of spouse and minor children cannot exceed \$100,000 at the time of application as determined using standard accounting procedures. The total value of an applicant's assets including those of spouse and minor children cannot exceed ~~\$250,000~~ \$350,000 including all real and personal property-;

(a) through (9) remain the same.

AUTH: 80-2-106, MCA  
IMP: 80-2-103, MCA

Reason: The proposed change of allowing an increase of total value of an applicant's assets from \$250,000 to \$350,000 will qualify a broader range of borrowers. An excess of total value of an applicant's assets over \$250,000 has prevented us from making some loans in the past.

4.3.604 LIMITATIONS (1) remains the same.

(2) Loans may be refinanced up to the maximum of ~~\$25,000~~ \$35,000.

(3) through (8) remain the same.

AUTH: 80-2-106, MCA  
IMP: 80-2-103, MCA

Reason: We propose to raise the amount to match the maximum loan in order to conform to practice applied by the department.

4. Concerned persons may submit their data, views or arguments concerning this proposed action in writing to Lee Boyer at the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-9442; or E-mail: agr@state.mt.us. Any comments must be received no later than November 23, 2000.



5. If persons who are directly affected by the proposed amendments 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 Lee Boyer at the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TDD: (406) 444-4687; Fax: (406) 444-9442; or E-mail: agr@state.mt.us. A written request for hearing must be received no later than November 23, 2000.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 133 persons based on 1334 past borrowers.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the Department of Agriculture. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, agriculture heritage program, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-9442; or E-mail: agr@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

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

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck  
Ralph Peck  
Director

/s/ Tim Meloy  
Tim Meloy, Attorney  
Rules Reviewer

Certified to the Secretary of State October 16, 2000.

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

In the matter of the	)	NOTICE OF PROPOSED ADOPTION
proposed adoption of new rule	)	
I pertaining to Canadian	)	NO PUBLIC HEARING
broker-dealer registration	)	CONTEMPLATED

TO: All Concerned Persons

1. On November 27, 2000, the state auditor and commissioner of securities proposes to adopt Rule I pertaining to broker-dealer registration.

2. The proposed rule provides as follows:

RULE I CANADIAN BROKER-DEALERS AND SALESPERSONS (1) A Canadian broker-dealer that is resident in Canada and has no office or other physical presence in the United States and is not an office of, branch of, or a natural person associated with a broker-dealer otherwise registered in the United States may transact business in this state without registering as a broker-dealer pursuant to 30-20-201, MCA, under the following conditions:

- (a) the business transacted by the Canadian broker-dealer must be limited to:
  - (i) transactions subject to the exemption provided by 30-10-105(7), MCA;
  - (ii) transactions with or for a Canadian person who is temporarily present in this state and with whom the Canadian broker-dealer had a bona fide customer relationship before the person entered this state; or
  - (iii) transactions with or for a Canadian person in a self-directed tax advantaged retirement plan in Canada of which that person is the holder or contributor; and
- (b) the Canadian broker-dealer must:
  - (i) file the following with the securities administrator:
    - (A) a notice in the form of that person's current application for registration required by the jurisdiction in which that person's head office is located; and
    - (B) a consent to service of process pursuant to 30-10-208, MCA;
  - (ii) be a member of a self-regulatory organization or stock exchange in Canada; and
  - (iii) maintain provincial or territorial registration and membership in a Canadian self-regulatory organization or stock exchange in good standing;
- (c) disclosure must be made to the customers in this state that the Canadian broker-dealer is not subject to the full regulatory requirements of the Securities Act of Montana; and

(d) the transaction must not be in violation of 30-10-301, MCA.

(2) A Canadian securities salesperson representing a Canadian broker-dealer transacting business in this state pursuant to (1) of this rule need not register pursuant to 30-10-201, MCA, provided that he or she is registered in good standing in the appropriate Canadian jurisdiction.

(3) Transactions by Canadian broker-dealers and their salespersons pursuant to (1) and (2) of this rule will be deemed to involve the "offer" of a security, as those terms are defined in 30-10-103, MCA, for purpose of compliance with 30-10-201, MCA, and the rules promulgated thereunder. Nothing in this rule shall affect the duty of the Canadian broker-dealer and its agents to comply with 30-10-301, MCA, and the rules promulgated thereunder.

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

IMP: Sec. 30-10-201, MCA

3. REASON: Rule I is being proposed to encourage, promote and facilitate capital investment in Montana, in this case specifically for Canadian citizens. Currently, Canadian citizens who live in Montana face obstacles to trading in their Canadian retirement plans. This rule change would exempt Canadian broker-dealer firms from registering in this state when conducting transactions for a Canadian person in his or her retirement plan. The rule would also exempt firms from registration when conducting securities business with a Canadian person temporarily in Montana and with whom the firm already has a customer relationship. The rule does not compromise investor protection because the rule requires Canadian firms to comply with registration requirements of their province or territory and because the rule does not exempt Canadian firms and salespersons from Montana's anti-fraud requirements.

4. Concerned persons may present their data, views, or arguments concerning the proposed adoption in writing to Brenda Elias, Montana Securities Department, P.O. Box 4009, Helena, Montana 59604, or by e-mail to brelias@state.mt.us, and must be received no later than November 23, 2000.

5. If persons who are directly affected by the proposed adoption wish to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to Brenda Elias, Montana Securities Department, P.O. Box 4009, Helena, Montana 59604, or by e-mail to brelias@state.mt.us. A written request for hearing must be received no later than November 23, 2000.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less of the persons who are directly affected by the proposed

action; from the 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 12 persons based on the 122 persons who have indicated interest in the rules of this agency and who the agency has determined could be directly affected by these rules.

7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, P.O. Box 4009, Helena, MT 59604, faxed to the office at 406-444-3497, e-mailed to brelias@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's office.

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

MARK O'KEEFE, State Auditor  
and Commissioner of Insurance

By: /s/ Peter Funk  
Peter Funk  
Deputy Insurance Commissioner

By: /s/ Janice VanRiper  
Janice VanRiper  
Rules Reviewer

Certified to the Secretary of State October 16, 2000.

BEFORE THE MONTANA STATE ELECTRICAL BOARD  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the petition )  
for declaratory ruling on the )  
clarification of low voltage )  
electrical communication or signal )  
equipment, whether parking lot or )  
street lighting are covered by )  
electrical code and which )  
electrical code is applicable )

NOTICE OF EXTENSION  
OF COMMENT PERIOD TO  
NOVEMBER 10, 2000

TO: All Concerned Persons

1. On September 7, 2000, the Montana State Electrical Board published a notice of petition for declaratory ruling at page 2433, 2000 Montana Administrative Register, issue number 17.

2. On October 11, 2000 at 9:00 a.m. a public hearing was held at the Department of Commerce, Professional and Occupational Licensing conference room B-07 of the Federal Building, 301 South Park Avenue, Helena, Montana, to consider the petition for declaratory ruling on the issue of clarification of low voltage electrical communication or signal equipment, whether parking lot or street lighting are covered by electrical code and which electrical code is applicable.

3. Prior to the end of the public comment period, the Department received a request to extend the comment period for the purpose of acquiring additional commentary from those individuals who would like to respond but who were not on the mailing list. The Montana Electrical Board concludes that in the interest of allowing the public a meaningful opportunity to comment on the petition for declaratory ruling, the comment period can be extended without significant adverse impact.

4. Written data, views or arguments may be submitted to: the Montana State Electrical Board, Professional and Occupational Licensing Division, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, e-mail compolele@state.mt.us and must be received by no later than 5:00 p.m., November 10, 2000.

MONTANA STATE ELECTRICAL BOARD  
TODD STODDARD, CHAIRMAN

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

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

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 16, 2000.

BEFORE THE BOARD OF NURSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the petition )  
for declaratory ruling on the )  
issue of whether the scope of )  
the Nurse Practice Act allows all )  
levels of nursing to conduct )  
un-waived CLIA tests )

NOTICE OF EXTENSION  
OF COMMENT PERIOD TO  
NOVEMBER 2, 2000

TO: All Concerned Persons

1. On September 7, 2000, the Board of Nursing published a notice of petition for declaratory ruling at page 2437, 2000 Montana Administrative Register, issue number 17.

2. On October 5, 2000 at 9:00 a.m. a public hearing was held at the Department of Commerce, Professional and Occupational Licensing conference room on the fourth floor of the Federal Building, 301 South Park Avenue, Helena, Montana, to consider the petition for declaratory ruling on the issue of whether the scope of the Nurse Practice Act allows all levels of nursing to conduct un-waived CLIA tests.

3. Prior to the end of the public comment period, the Department heard a statement that some interested persons had not been notified of the petition for declaratory ruling and associated time lines. In the interest of allowing the public a meaningful opportunity to comment on the petition for declaratory ruling, the comment period is extended.

4. Written data, views or arguments may be submitted to: the Board of Nursing, Professional and Occupational Licensing Division, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, e-mail compolnur@state.mt.us and must be received by no later than 5:00 p.m., November 2, 2000.

BOARD OF NURSING  
RITA HARDING, RN, MN, PRESIDENT  
ANNIE M. BARTOS, RULE REVIEWER

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, October 16, 2000.



BEFORE THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to license seal, safety and welfare of the public, performance of services in areas of competence, conflicts of interest, avoidance of improper solicitation of professional employment and the adoption of new rules pertaining to direct supervision, the definition of responsible charge, an introduction to the rules on professional conduct and the issuance of public statements ) NOTICE OF PUBLIC HEARING  
) ON THE PROPOSED AMENDMENT  
) OF ARM 8.48.802 LICENSE SEAL, 8.48.1202 SAFETY, HEALTH AND WELFARE OF THE PUBLIC PARAMOUNT IN THE PERFORMANCE OF PROFESSIONAL DUTIES, 8.48.1203 PERFORMANCE OF SERVICES ONLY IN AREAS OF COMPETENCE, 8.48.1205 CONFLICTS OF INTEREST, 8.48.1206 AVOIDANCE OF IMPROPER SOLICITATION OF PROFESSIONAL EMPLOYMENT AND THE ADOPTION OF NEW RULE I DIRECT SUPERVISION, NEW RULE II DEFINITION OF RESPONSIBLE CHARGE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS, NEW RULE III INTRODUCTION AND NEW RULE IV ISSUANCE OF PUBLIC STATEMENTS

TO: All Concerned Persons

1. On November 16, 2000, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing conference room #B-07, Federal Building, 301 South Park Avenue, 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 and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Professional Engineers and Land Surveyors no later than 5:00 p.m., on November 10, 2000, to advise us of the nature of the accommodation that you need. Please contact Todd Boucher, Board of Professional Engineers and Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2368; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail compolpel@state.mt.us.

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

8.48.802 LICENSE SEAL (1) and (2) will remain the same.  
(3) The seal may be a rubber stamp, embossed or electronic provided the licensee's hand written signature

accompanies the seal. Electronic or rubber stamp signatures are prohibited. Electronic copies of drawings or other correspondence shall contain the following: "This document was originally issued and sealed by (name of sealer), on (date of sealing)." Any document provided electronically shall not be considered a certified document.

(4) Draft or preliminary documents need not bear the licensee's seal and signature, but must be stamped "preliminary," and shall state that the document(s) are not to be used for construction, bidding, recordation, conveyance, or as a basis for the issuance of a permit.

(5) Multidiscipline designs shall include the seal and signature of the person in responsible charge for each discipline and these will be located on the corresponding pages for each particular discipline.

(6) Drawings and documents containing work done under the responsible charge of more than one licensee shall be sealed and signed by each licensee and shall clearly note the extent of each licensee's responsibility.

Auth: Sec. 37-67-202, MCA  
IMP: Sec. 37-67-314, MCA

**REASON:** The Board is proposing the amendments to this rule for clarification and to establish standards for professional practice and the use of the licensee's seal.

8.48.1202 SAFETY, HEALTH AND WELFARE OF THE PUBLIC  
PARAMOUNT IN THE PERFORMANCE OF PROFESSIONAL DUTIES

(1) Licensees shall ~~at all times~~ recognize that their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgment is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer ~~of~~ or client and such other authority as may be appropriate.

(2) Licensees shall approve and seal ~~only those design documents and surveys, reviewed or prepared by them,~~ which are ~~safe for public health, property and welfare~~ in conformity with accepted engineering and land surveying standards and are safe for public health, property and welfare.

(3) Licensees having knowledge of any alleged violation ~~of any of these the laws and rules of professional conduct~~ shall must report all such allegations to the board.

Auth: Sec. 37-1-319, MCA  
IMP: Sec. 37-67-301, MCA

**REASON:** The Board is proposing the amendments to this rule for clarification and consistency with other board rules and statutes.

8.48.1203 PERFORMANCE OF SERVICES ONLY IN AREAS OF  
COMPETENCE (1) Licensees shall perform services only in the

areas of their competence gained through education or verifiable experience.

(2) Licensees shall not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competence, nor to any such plan or document not prepared ~~or reviewed~~ under their ~~direct supervisory control~~ responsible charge.

(3) ~~In the event~~ If a question arises as to the competence of a licensee in a specific technical field which cannot otherwise be ~~otherwise~~ resolved to the board's satisfaction, the board, ~~either~~ upon request of the licensee or on its own volition, may require that the licensee take an appropriate examination.

Auth: Sec. 37-1-319, 37-67-202, MCA  
IMP: Sec. 37-1-316, 37-1-319, MCA

**REASON:** The Board is proposing the amendments to this rule for clarification and consistency with other board rules and statutes.

8.48.1205 CONFLICTS OF INTEREST (1) will remain the same.

(2) Licensees shall disclose all known or potential conflicts of interest to their employers ~~or~~ and clients by promptly informing them of any business association, interest or other circumstances which could influence their judgement or the quality of their services.

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

Auth: Sec. 37-1-319, 37-67-202, MCA  
IMP: Sec. 37-1-316, 37-67-301, MCA

**REASON:** The Board is proposing this amendment in response to requests that both the employer and client be notified of potential conflicts of interest so that all parties are fully informed.

8.48.1206 AVOIDANCE OF IMPROPER SOLICITATION OF PROFESSIONAL EMPLOYMENT (1) and (2) will remain the same.

(3) The licensee shall accurately represent to a prospective or existing client or employer the licensee's qualifications and scope of their responsibility in connection with work for which they are claiming experience.

Auth: Sec. 37-1-319, 37-67-202, MCA  
IMP: Sec. 37-1-316, 37-67-301, MCA

**REASON:** The Board is proposing the amendment to this rule in response to requests from the public that licensees be required to accurately represent their qualifications.

4. The proposed new rules provide as follows:

NEW RULE I DIRECT SUPERVISION (1) The term "direct supervision" means the licensee, by regular participation, has exercised directing, guiding and restraining power on matters embodied in the plans, designs, and advice involved in the engineering or land surveying work and accepts responsibility for the contents. After-the-fact review or checking of technical submissions does not satisfy the "exemption" provision of 37-67-103(3), MCA.

Auth: 37-67-202, MCA  
IMP: 37-67-103, MCA

REASON: The Board is proposing this new rule to define the term "direct supervision".

NEW RULE II DEFINITION OF RESPONSIBLE CHARGE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS (1) The term "responsible charge" directly relates to the degree of control a licensee is required to maintain while exercising independent control and direction of engineering or land surveying work and to the decisions which can be made only under the direct supervision of a professional engineer or a professional land surveyor.

(a) The degree of control necessary to be in responsible charge shall be such that the licensee:

(i) personally makes engineering or land surveying decisions, or reviews and approves proposed decisions prior to their implementation, including consideration of alternatives, whenever technical decisions are made. In making engineering or land surveying decisions, the licensee must be physically present or through the use of communication devices, can be available in a reasonable period of time; and

(ii) judges the qualifications of technical specialists and the validity and applicability of their recommendations before such recommendations are incorporated in the work.

(b) To be considered in responsible charge of a project, the professional licensee who signs engineering or land surveying documents must be capable of answering questions asked by equally qualified professionals. These questions would be relevant to the decisions made during the individual's participation in the project and require responses in sufficient detail to leave little question as to the licensee's technical knowledge of the work performed. It is not necessary to defend decisions as in an adversary situation, but only to demonstrate that the individual in responsible charge made the decisions and possessed sufficient knowledge of the project to make the decisions.

(i) Examples of questions to be answered by the engineer could relate to criteria for design, methods of analysis, methods of manufacture and construction, selection of materials and systems, economics of alternate solutions, and environmental considerations. The individual should be able to clearly define the degree of control and how it is exercised within the organization and geographically and to

demonstrate that the engineer is answerable within that degree of control.

(ii) Examples of questions to be answered by the land surveyor could relate to criteria for design, methods of analysis and conclusions made including, but not limited to, the retracement of government surveys, interpretation and construction of deeds, application of proportion methods and analysis of evidence related to unwritten property rights. The individual should be able to clearly define the degree of control and how it is exercised within the organization and geographically and to demonstrate that the land surveyor is answerable within that degree of control.

Auth: Sec. 37-67-202, MCA

IMP: Sec. 37-67-101, MCA

REASON: The Board is proposing this rule to provide more detail to the definition of responsible charge as found in 37-67-101, MCA, to clarify the degree of control and to establish responsible charge criteria.

NEW RULE III INTRODUCTION (1) In order to safeguard life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the following rules are binding on all licensees.

(a) The board requires that all licensees uphold and advance the honor, integrity and dignity of their engineering and surveying professions within the ethical standards encompassed in this chapter.

(b) All licensees are required to have knowledge of the laws and rules of their profession and shall understand them. Such knowledge shall encompass the understanding that the practice of engineering and land surveying is a privilege, as opposed to a right.

(2) All licensees shall insure that their communications with others will be clear, complete, accurate, objective, truthful and timely. This includes the report of errors, omissions, mistakes and their remedy when appropriate.

Auth: Sec. 37-1-319, 37-67-202, MCA

IMP: Sec. 37-67-301, 37-67-331, MCA

REASON: The Board is proposing this rule in response to complaints from the public that licensees do not know the rules of professional conduct. The provisions of this rule make it mandatory on licensees to know and understand the laws and rules of their professions.

NEW RULE IV ISSUANCE OF PUBLIC STATEMENTS (1) Public statements may only be issued in an objective and truthful manner.

(a) Licensees shall be objective and truthful in professional reports, statements and testimony.

(b) Licensees may express publicly a professional opinion on technical subjects only when the opinion is founded upon adequate knowledge of the facts and competence in the subject matter.

(c) Licensees shall issue no statements, criticism or arguments on technical matters which are inspired or paid for by interested parties, unless the licensees have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking and by revealing the existence of any interest the licensees may have in the matters.

Auth: Sec. 37-67-202, MCA

IMP: Sec. 37-1-316, 37-67-301, MCA

REASON: The Board is proposing this new rule in response to complaints from the public requesting that the Board establish criteria for public statements and opinions.

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 Professional Engineers and Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to compolpel@state.mt.us and must be received no later than 5:00 p.m., November 24, 2000. If comments are submitted in writing, the Board requests that the person submit nine copies of their comments.

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

7. The Board of Professional Engineers and Land Surveyors maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Professional Engineers and Land Surveyors administrative rule making proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Professional Engineers and Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to compolpel@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF PROFESSIONAL ENGINEERS  
AND LAND SURVEYORS  
WARREN SCARRAH, 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, October 16, 2000.

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS AND  
PROFESSIONAL COUNSELORS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to definitions and licensure requirements ) NOTICE OF PUBLIC HEARING ON  
) THE PROPOSED AMENDMENT OF  
) ARM 8.61.401 DEFINITIONS,  
) AND 8.61.1201 LICENSURE  
) REQUIREMENTS

TO: All Concerned Persons

1. On November 21, 2000, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing conference room #487, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Social Work Examiners and Professional Counselors no later than 5:00 p.m., on November 17, 2000, to advise us of the nature of the accommodation that you need. Please contact Mary C. Hainlin, Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2369; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolswp@state.mt.us.

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

8.61.401 DEFINITIONS (1) through (4) will remain the same.

(5) "Psychotherapy and counseling" means the therapeutic process of:

(a) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives; or

(b) planning, implementing, and evaluating treatment plans that use treatment interventions to facilitate human development and to identify and remediate mental, emotional or behavioral disorders and associated distresses that interfere with mental health.

Auth: Sec. 37-22-201, MCA

IMP: Sec. 37-22-102, 37-22-201, MCA

REASON: Due to the diverse areas of practice in the mental health care field, the definition of psychotherapy and counseling in the practice of social work is needed to further clarify these elements of social work practice.



8.61.1201 LICENSURE REQUIREMENTS (1) through (2) will remain the same.

(3) "3,000 hours" is defined as clock hours of experience working in a counseling setting. The hours shall have been completed in their entirety at the time of submission of the application.

~~(a) At least one-half of the 3,000 hours must be obtained after the academic requirement has been met. 1,500 of these hours may be obtained prior to completion of the academic degree. This can include hours earned in practicums, internships and work sites approved by the program faculty.~~

(i) Exclusive of the advanced practicum requirement, the degree candidate shall receive one hour of face-to-face supervision and/or consultation for every 15 hours of work from a licensed mental health professional, a licensed member of the faculty staff or an on-site counseling professional deemed appropriate by the faculty staff.

(ii) Appropriate sites for this pre-degree counseling experience is left to the discretion of the counseling faculty of the institution offering the degree.

(iii) All treatment interventions and assessment results and interpretations shall be reviewed and approved by the supervisor or appropriate faculty prior to their use or implementation.

~~(b) Hours earned in practical internship, etc., during the graduate program experience, up to one-half of the above total, will be accepted. At least 1500 hours must be obtained post-degree and after all of the academic requirements have been completed, which shall include at least:~~

(i) 1,000 hours direct face-to-face client contact in a clinical setting. No more than 250 client contact hours of which may be in a group or co-facilitative counseling situation.

(ii) Clinical setting is defined as any public and/or private agency whose primary functions are:

(A) conducting psychosocial assessments and diagnoses for the purpose of establishing treatment goals and objectives;

(B) planning, implementing and evaluating treatment plans that use treatment interventions to facilitate human development and to identify and remediate mental, emotional or behavioral disorders and associated distresses that interfere with mental health, social functioning, or the functioning of established social units;

(C) selecting, administering, scoring, and interpreting psychosocial assessment instruments to assess personal characteristics and using nonstandardized methods and techniques for understanding human behavior in relation to coping with or adapting to changing life situations;

(D) implementing counseling treatment interventions using those cognitive, affective, behavioral sciences that are specifically implemented in the context of a therapeutic relationship; or

(E) evaluating information to identify needs or problems of an individual or social units to determine the advisability of referral to other specialists, informing the individual(s) of the judgment, and communicating as requested or considered appropriate with the referral sources.

(c) Applicant must receive a minimum of one hour of face-to-face supervision and consultation for every 20 hours of work experience. All reports and/or assessment interpretations and results sent to other public or private agencies that affects the current social status of a client must be reviewed by and contain the approval and signature of the trainee's supervisor. These reports shall identify the supervisee's "in training" non-licensed status.

(d) All therapeutic interventions and the assessment results and interpretations used in the planning and/or implementation of those therapeutic interventions shall be reviewed and pre-approved by the trainee's supervisor on a continual and on-going basis.

(e) All professional communications, both private and public, including advertisements, shall clearly indicate the supervisee's "in-training" and non-licensed status.

(f) The applicant must receive a minimum of one hour of face-to-face supervision and consultation for every 20 hours of work experience. No more than 80 hours of work experience may transpire without receiving the required hours of supervision and/or consultation. Less frequent supervision may take place only with prior approval of the licensure board. Any hours earned without appropriate supervision will not be counted towards licensure.

(d) will remain the same but be renumbered (g).

(4) will remain the same.

Auth: Sec. 37-23-103, MCA

IMP: Sec. 37-23-101, 37-23-103, MCA

**REASON:** To meet the requirements of law, a more standard outline and clarification is needed in connection with the supervisory requirements for the 3,000 supervised practice hours for professional counselor applicants.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolswp@state.mt.us and must be received no later than 5:00 p.m., November 24, 2000. If comments are submitted in writing, the Board requests that the person submit seven copies of their comments.

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

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

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

BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
RICHARD SIMONTON, 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, October 16, 2000.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF PUBLIC HEARING ON
of NEW RULES I through LII, on )	PROPOSED ADOPTION AND
the identification and )	REPEAL
management of hazardous )	
wastes, and the repeal of ARM )	
Title 17, chapter 54 )	(HAZARDOUS WASTE)

TO: All Concerned Persons

1. On November 15, 2000 at 1:00 p.m. in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Department of Environmental Quality will hold a public hearing to consider the proposed adoption and repeal of the above-captioned rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5 p.m., November 10, 2000, to advise us of the nature of the accommodation you need. Please contact the Department at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The proposed new rules provide as follows:

RULE I PURPOSE (1) The purpose of the rules in this chapter is to provide for the control of all hazardous wastes that are generated within, or transported to Montana for the purposes of storage, treatment and disposal or for the purposes of resource conservation or recovery.

(2) The rules in this chapter are adopted to discharge the department's responsibilities under Title 75, chapter 10, part 4, Montana Code Annotated (MCA), the Montana Hazardous Waste Act (Act), by establishing a management control system including permitting that assures the safe and proper management of hazardous wastes from the moment of their generation through each stage of management until their ultimate destruction or disposal.

AUTH: 75-10-404, 75-10-405, MCA  
IMP: 75-10-405, 75-10-406, MCA

RULE II SCOPE OF RULES (1) In the Administrative Rules of Montana (ARM) the terms "waste" and "solid waste" are used differently than in regulations promulgated by the U.S. environmental protection agency (EPA). EPA uses the term "solid waste" to mean all waste materials subject to the Resource Conservation and Recovery Act (RCRA). In the ARM, the term "waste" means all waste materials subject to RCRA. EPA uses the term "non-hazardous solid waste" to indicate those "solid waste" materials that are not covered under EPA's

hazardous waste regulations. In the ARM, the term "solid waste" refers only to non-hazardous wastes. Therefore, "solid waste" and "hazardous waste" are mutually exclusive terms in the ARM and refer to the two subsets of all "waste" materials.

(a) Hazardous wastes are regulated under this chapter; and

(b) Solid wastes are regulated under ARM Title 17, chapter 50, subchapter 5 entitled "Refuse Disposal".

(2) This chapter establishes standards for identifying hazardous waste as well as standards for hazardous waste management procedures for generators, transporters, and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(3) Injection wells that dispose of hazardous waste are not subject to the permitting requirements of this chapter but may be subject to regulation by the EPA. However, where surface facilities that treat, store, or dispose of hazardous waste are associated with injection wells, such associated surface facilities are subject to the permitting requirements of this chapter.

AUTH: 75-10-405, MCA

IMP: 75-10-405, MCA

RULE III ADMINISTRATIVE PENALTY (1) Assessment of an administrative penalty under this rule must be made in conjunction with an administrative order, notice of violation, or other administrative action authorized under Title 75, chapter 10, part 4, MCA.

(a) The order, notice of violation, or notice of other administrative action may be served upon the violator or the violator's agent either by personal service or by certified mail. Service by mail is complete on the date of mailing.

(b) Each order, notice of violation, or notice of other administrative action that assesses an administrative penalty must include the following:

(i) a statement of the statutory or rule section(s) violated;

(ii) a statement of the facts constituting the violation(s) for which the penalty is assessed;

(iii) a statement of the amount of the penalty assessed; and

(iv) notice of opportunity to request a hearing before the board in accordance with (2) below.

(2) A person named in an order, notice of violation, or notice of other administrative action that assesses an administrative penalty may request a hearing before the board. A request for hearing must be made in writing and filed with the board within 30 days after the order, notice of violation, or notice of other administrative action is served upon the person requesting the hearing. The order or notice becomes final unless a hearing is requested within the 30-day period.

AUTH: 75-10-405, MCA

IMP: 75-10-424, MCA

RULE IV INCORPORATION BY REFERENCE (1) In accordance with the Act, these rules establish a hazardous waste management program that is the equivalent of the federal hazardous waste management program established by the United States Congress under the Resource Conservation and Recovery Act of 1976 (42 USC 6901-6987), as amended and administered by the EPA.

(2) In view of the Act's requirement of equivalency with the federal RCRA program and in order to simplify the rulemaking process and make the rules less cumbersome, in these rules, the department relies heavily upon adoption and incorporation by reference of federal requirements as set forth in Title 40 of the Code of Federal Regulations (CFR).

(3) When incorporated by reference in this chapter, references to 40 CFR 260 through 270, 273, or 279 refer to the version of that publication revised as of July 1, 1999. References in this chapter to 40 CFR 260 through 270, 273, or 279 that incorporate publications refer to the version of the publication as specified at 40 CFR 260.11. 40 CFR 60, Appendix A, methods 1-5, are also incorporated by reference.

(4) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at "<http://www.access.gpo.gov/nara/cfr/index.html>". Materials adopted and incorporated by reference in this chapter are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(5) Where exceptions to incorporated federal regulations are necessary, these exceptions are noted in the rules.

(6) Cross-references within federal regulations adopted and incorporated by reference in these rules refer to the cross-referenced provision as adopted and incorporated by reference in this chapter with any indicated additions and exceptions.

(7) The adoption and incorporation by reference of federal regulations as state rules does not negate the requirement to comply with federal regulations that are not incorporated in this chapter and that are retained as federal authority.

AUTH: 75-10-405, MCA

IMP: 75-10-405, MCA

RULE V SUBSTITUTION OF STATE PERMITTING PROCEDURES

(1) The permitting procedures of subchapter 12 of this chapter are substituted for the permitting procedures of 40 CFR 124. All references to 40 CFR 124 in 40 CFR 260 through 270, 273 and 279, as adopted and incorporated by reference in this chapter, mean the permitting procedures contained in subchapter 12 of this chapter.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE VI SUBSTITUTION OF STATE TERMS FOR FEDERAL TERMS

(1) When used in Title 40 of the CFR, as adopted and incorporated by reference in this chapter, the following terms have the meanings specified below, unless otherwise indicated in these rules:

(a) "Act" means the Montana Hazardous Waste Act, Title 75, chapter 10, part 4, MCA.

(b) "Administrator" means the director of the Montana department of environmental quality.

(c) "Agency" means the Montana department of environmental quality.

(d) "Director" means the director of the Montana department of environmental quality.

(e) "Environmental protection agency" or "EPA" means the Montana department of environmental quality.

(f) "Non-hazardous solid waste" means solid waste (see [RULE II(1)]).

(g) "He" means he, she, or it, without regard to gender.

(h) "Notification requirements of section 3010" means the notification requirements of this chapter.

(i) "RCRA permit" means state hazardous waste permit.

(j) "Regional administrator" means the director of the Montana department of environmental quality.

(k) "She" means he, she, or it, without regard to gender.

(l) "Solid waste" means waste (see [RULE II(1)]).

(m) "State", "authorized state", "approved state", and "approved program" mean Montana, except at:

(i) 40 CFR 260.10 in the definitions of "person", "state", and "United States";

(ii) 40 CFR 262;

(iii) 40 CFR 264.143(e)(1); 265.143(d)(1); 264.145(e)(1); 265.145(d)(1); 264.147(a)(1)(ii), (b)(1)(ii), (g)(2), and (i)(4); and 265.147(g)(2) and (i)(4); and

(iv) 40 CFR 270.2 in the definitions of "approved program" or "approved state", "director", "final authorization", "person", and "state".

(n) "United States" means the state of Montana.

(2) The definitions of the following terms found in 40 CFR 260.10 are excluded from substitution pursuant to (1)(a) and (j) of this rule:

(a) administrator; and

(b) regional administrator.

(3) The definitions of the following terms found in 40 CFR 260.10 are excluded from substitution pursuant to (1)(e) of this rule:

(a) administrator;

(b) EPA region; and

(c) regional administrator.

(4) The substitution of terms in (1) of this rule does not apply in the following portions of 40 CFR 260 through 40

CFR 270, as adopted and incorporated by reference in this chapter:

- (a) 40 CFR 261.6(a)(3)(i)(A);
- (b) 40 CFR 261.6(a)(3)(i)(B);
- (c) 40 CFR 262.11;
- (d) 40 CFR 262.51;
- (e) 40 CFR 262.52;
- (f) 40 CFR 262.53. See [RULE XXIV] for more information;
- (g) 40 CFR 262.54. See [RULE XXIV] for more information;
- (h) 40 CFR 262.55. See [RULE XXIV] for more information;
- (i) 40 CFR 262.56. See [RULE XXIV] for more information;
- (j) 40 CFR 262.57. See [RULE XXIV] for more information;
- (k) 40 CFR 264.12(a);
- (l) 40 CFR 265.12(a);
- (m) 40 CFR 270.2;
- (n) 40 CFR 270.5;
- (o) 40 CFR 270.11(a)(3);
- (p) 40 CFR 270.32(b)(2);
- (q) 40 CFR 270.32(c);
- (r) 40 CFR 270.72(a)(5); and
- (s) 40 CFR 270.72(b)(5).

(5) In 40 CFR 263, as adopted and incorporated by reference in this chapter, the terms "EPA", "United States", and "administrator" have the same meaning as in the federal regulation.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE VII REGISTRATION AND EPA IDENTIFICATION NUMBERS FOR GENERATORS AND TRANSPORTERS

(1) Small and large generators who accumulate, treat, store, dispose, transport, or offer for transportation hazardous waste must have current registration with the department and a current EPA identification number.

(a) A "large generator" is a generator of hazardous waste who is not either a "small generator" or "conditionally exempt small quantity generator" as defined below, or who generates at any time in a calendar month, or accumulates at any time:

- (i) greater than 1 kilogram (2.2 pounds) of acute hazardous waste; or
- (ii) greater than 100 kilograms (220 pounds) of any residue, contaminated soil, waste, or other debris resulting from a discharge, into or on any land or water, of acute hazardous waste.

(b) A "small generator" is a generator of hazardous waste who generates in a calendar month between 100 kilograms (220 pounds) and 1000 kilograms (2200 pounds) of hazardous waste;

(c) A "conditionally exempt small quantity generator" or "conditionally exempt generator" is a generator of hazardous waste who generates in a calendar month no more than 100 kilograms (220 pounds) of hazardous waste.

(i) If a conditionally exempt small quantity generator accumulates at any time more than 1000 kilograms (2200 pounds) of hazardous waste, all of those wastes shall be subject to



regulation as if they were generated and accumulated by a small generator.

(2) A generator shall register with the department by submitting an application on a form (EPA form 8700-12, Notification of Regulated Waste Activity) provided by the department or EPA.

(3) Upon receiving a completed application form and payment of the registration fee as required by [RULE IX], the department shall register the generator for the current registration year, and shall assign an EPA identification number to the generator if one has not yet been assigned.

(4) A small or large generator may not offer hazardous waste to a transporter who has not received an EPA identification number.

(5) A small or large generator may not offer hazardous waste to a treatment, storage and disposal facility that is not a "designated facility" as defined in 40 CFR 260.10.

(6) A transporter may not transport hazardous wastes without having received an EPA identification number from the department or EPA.

(7) A transporter who has not received an EPA identification number may obtain one by applying to the department. Upon receiving a request from a transporter for an EPA identification number, the department shall assign an EPA identification number to the transporter.

AUTH: 75-10-204, 75-10-404, 75-10-405, MCA

IMP: 75-10-204, 75-10-212, 75-10-214, 75-10-221 and 75-10-405, MCA

RULE VIII FACILITY PERMIT FEES: APPLICATION, RENEWAL, MODIFICATION AND MAINTENANCE FEES (1) For the purposes of this rule, the following definitions apply:

(a) "Class I facility" means a hazardous waste management facility that:

(i) contains one or more regulated landfill units, surface impoundments, land treatment units, incinerators, boilers, or industrial furnaces; and

(ii) receives more than 50% of its hazardous waste from off-site sources not owned, controlled, or operated by the facility owner or operator.

(b) "Class II facility" means a hazardous waste management facility that is not a class I facility or a class III facility.

(c) "Class III facility" means a hazardous waste management facility that:

(i) does not contain a regulated landfill unit, surface impoundment, land treatment unit, incinerator, boiler, or industrial furnace; and

(ii) generates more than 50% of its hazardous waste on-site or receives more than 50% of its hazardous waste from off-site sources that are owned, controlled, or operated by the facility owner or operator.

(2) The department shall assess to an applicant for a hazardous waste management permit under this subchapter a filing and review fee based upon the following schedule:

(a) For Class I facilities, a maximum fee of \$150,000, payable as follows:

(i) a nonrefundable payment of \$50,000 due when the applicant files for a permit;

(ii) a payment of \$50,000 due when the department notifies the applicant that the application is complete; and

(iii) an additional payment of up to \$50,000 for the department's actual costs of review that exceed \$100,000. This payment is due within 30 days after the department's final decision on the application.

(b) For Class II facilities, a maximum fee of \$90,000, payable as follows:

(i) a nonrefundable payment of \$40,000 due when the applicant files for a permit; and

(ii) an additional payment of up to \$50,000 for the department's actual costs of review that exceed \$40,000. This payment is due within 30 days after the department's final decision on the application.

(c) For Class III facilities, a maximum fee of \$25,000, payable as follows:

(i) a nonrefundable payment of \$10,000 due when the applicant files for a permit; and

(ii) an additional payment of up to \$15,000 for the department's actual costs of review that exceed \$10,000. This payment is due within 30 days after the department's final decision on the application.

(d) If, after receipt of the payment required in (2)(a)(ii) above, the applicant notifies the department in writing of its intent to withdraw the application, the department shall return to the applicant any portion of the payment received pursuant to (2)(a)(ii) above that exceeds the department's actual costs of permit review.

(3) At the time the permit reissuance process is initiated, the department shall assess a permit reissuance fee.

(a) The fee shall be as follows:

(i) \$10,000 for a Class I facility;

(ii) \$5,000 for a Class II facility; and

(iii) \$2,000 for a Class III facility.

(b) If payment for permit reissuance is not received by the department within 10 days after initial billing, the department may suspend all work on the permit reissuance until the fee has been received.

(4) The department shall assess a permit modification fee for all permit modifications, at the time the modification process is initiated, regardless of whether the modification is requested by the permittee or initiated by the department.

(a) The fee shall be as follows:

(i) \$1,500 for Class 2 or 3 modifications as listed in 40 CFR 270.42, Appendix I, except that, if a Class 2 or 3 modification is so significant as to constitute reissuance of

a permit, the fee schedule set forth in (3) of this rule applies in lieu of the \$1,500 fee;

(ii) For Class 1 modifications listed in 40 CFR 270.42, Appendix I:

(A) \$100 for those Class 1 modifications listed in items A through E of Appendix I; and

(B) \$500 for those Class 1 modifications listed in items F through L of Appendix I.

(b) If a modification is very minor (e.g., changing only a name or an address on the permit documents), the department may waive the fee.

(c) If payment for a permit modification is not received by the department within 10 days after initial billing, the department may suspend all work on the permit modification until the permit modification fee has been received.

(5) A hazardous waste management facility that receives more than 50% of its hazardous wastes from off-site generators that are not owned or operated by the facility owner or operator or site owner shall pay to the department hazardous waste management fees based upon the amount of waste received, as follows:

(a) \$8 per ton of hazardous waste received at the facility or site for management in regulated landfill units, surface impoundments, land treatment units, incinerators, boilers or industrial furnaces; and

(b) \$4 per ton of hazardous wastes received at the facility or site for management in any regulated unit or units other than those described in (5)(a) above.

(c) The fees established in (5)(a) and (b) above may be prorated for amounts of hazardous waste received that are less than one ton in weight.

(d) Payment of the fees established in (5)(a) and (b) above shall be submitted to the department quarterly, with payments due on March 31, June 30, September 30 and December 31 of each year.

AUTH: 75-10-404, 75-10-405, 75-10-406, MCA  
IMP: 75-10-405, 75-10-406, MCA

RULE IX REGISTRATION FEES: FEE EXEMPTION, FEE ASSESSMENT, AND MAINTAINENCE OF REGISTRATION (1) The following persons are not required to maintain registration as generators or to pay the annual registration fee:

(a) conditionally exempt small quantity generators who are subject to the special provisions of 40 CFR 261.5;

(b) persons whose only hazardous wastes are recyclable materials as defined in 40 CFR 261.6;

(c) persons whose wastes are excluded from regulation as hazardous wastes under 40 CFR 261.4;

(d) farmers who generate hazardous wastes and who dispose of all such wastes on their own farm property in accordance with 40 CFR 262.70.

(2) To be exempted from payment of a fee under this rule, a generator must qualify for the exclusions of (1) above for the entire registration year.

(3) The department shall use the following methods to assign each generator who is subject to registration to one of five size classes for the purpose of fee assessments:

(a) for generators who have been registered in previous years, the department shall use the annual reports submitted pursuant to [RULE XXV], for up to a maximum of the three most recent reporting years, to determine an average (mean) annual hazardous waste generation rate; and

(b) for new generators who have not been registered in previous years, the department, after consultation with the generator, shall determine the generator's projected annual hazardous waste generation rate.

(4) The size classes for determining the annual registration fee amount are defined in Table 1 below:

TABLE 1

<u>Annual Generation Size Class</u>	<u>Annual Rate (in tons)</u>	<u>Generator Reg. Fee</u>
I Small/Large	$X \leq 13$	\$ 75
II Large	$13 < X \leq 100$	\$ 200
III Large	$100 < X \leq 1000$	\$ 600
IV Large	$1000 < X \leq 2500$	\$1000
V Large	$2500 < X$	\$1500

(5) Generators assigned to a size class for registration fee assessment purposes remain in that size class each registration year until the department determines that assignment to a new class is appropriate based upon:

(a) an evaluation of recent annual reports under (3)(a) of this rule; or

(b) the review of a registered generator's petition that documents that waste generation rates have changed and that the changes are projected to be long-term.

(6) When a generator has allowed its registration to lapse, through the operation of (1) of this rule, it may reinstate its generator registration for the current registration year by paying a \$50 reinstatement fee in addition to any other applicable generator registration fee(s).

(7) Re-registration of generators shall occur at the beginning of each registration year. The department shall prepare and mail re-registration invoices by February 1.

(8) Registration fees are due within 30 days after the billing date. A late payment charge of 10% per month, or a minimum charge of \$10, whichever is greater, may be assessed by the department for fee payments not received within 60 days after the billing date.

AUTH: 75-10-404, 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE X PURPOSE OF SUBCHAPTER (1) The purpose of this subchapter is to insure that information obtained by the department regarding facilities and sites used for the treatment, storage and disposal of hazardous wastes, as those terms are defined in 40 CFR 260.10, is available to the public.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XI DEFINITIONS In this subchapter, the following definition applies:

(1) "Record" means any paper, writing, photograph, sound or magnetic recording, drawing, form, book, correspondence, microfilm, magnetic tape, computer storage media, map, or other document or other similar mechanism regardless of physical form or characteristics by which information has been preserved that has been made or acquired by the department or department employees in connection with the transaction of official business preserved for informational value or as evidence of a transaction and all other records of documents required by law to be filed with or kept by the department.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XII RECORDS AVAILABLE AUTOMATICALLY (1) Any written request for the following types of records routinely distributed by the department shall be honored automatically:

- (a) finalized press releases;
- (b) copies of rules;
- (c) educational materials (including pamphlets); and
- (d) copies of speeches that have been delivered to the public.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XIII FORM OF REQUEST (1) A request for information pertaining to a facility under this subchapter must be made in writing, must reasonably describe the records sought in a way that will permit their identification, and should be

addressed to the Air and Waste Management Bureau, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XIV PRIVILEGED BUSINESS INFORMATION (1) Any hazardous waste management facility that deems information that it submits to the department as confidential shall, prior to submission of the information to the department, label the information as confidential and/or obtain a protective order prohibiting disclosure to the public. Any information that is not confidential must be disclosed to the public upon request.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XV DEPARTMENT DECISION TO ANSWER REQUEST (1) The department shall, within 10 business days after a request for records pertaining to facilities, issue a written statement to the requestor stating which of the requested records, if any, will not be released and the reason for the denial of the request, including, if applicable, the need of the department to resolve a claim for confidentiality. Any other records not designated as non-releasable shall be provided to the requestor by the department.

(2) To the extent that records are required to be made available for public inspection, the department may inform the requestor that the records are available for inspection and where copies may be obtained.

(3) The period of 10 business days (or any extension thereof) does not include any time that elapses between the date that a requestor is notified by the department that the request does not reasonably identify the records sought, and the date that the requestor furnishes a reasonable identification.

(4) The period of 10 business days (or any extension thereof) does not include any time that elapses between the date that a requestor is notified by the department that payment of fees is required, and the date that the requestor pays (or makes arrangements to pay) such charges.

(5) The department may under unusual circumstances as outlined below extend the basic 10-day period established in (1) of this rule up to an additional 10 business days. In such cases, the department shall furnish written notice to the requestor stating the reasons for the extension and the date by which the department expects to issue the determination. Unusual circumstances justifying an extension include:

(a) additional time is needed to search for and collect the requested records from separate facilities;

(b) additional time is needed to search for and collect the requested records because of the volume of the request; or

(c) additional time is needed for consultation with another agency having a substantial interest in the determination.

(6) Failure of the department to issue a determination within the 10-day period or any extension constitutes a final agency decision appealable to the board.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XVI APPEAL (1) Each written notice by the department of its decision to deny a request for a record under this subchapter must state the reasons for the denial and the opportunity for the requestor to appeal the initial denial to the board by filing a written notice of appeal within 30 days after receipt of the determination.

(2) If a requestor chooses to appeal the decision of the board, the requestor must file a petition in district court within 30 days after service of the final agency decision according to 2-4-702, MCA.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XVII DEFINITIONS (1) Except where inconsistent with the definitions in (2) below, the definitions in 40 CFR 260 through 40 CFR 270 are hereby adopted and incorporated by reference.

(2) In this chapter, the following terms shall have the meanings or interpretations shown below:

(a) "Board" means the board of environmental review provided for in 2-15-3502, MCA.

(b) "Calendar year" means a year beginning on January 1 and ending on December 31.

(c) "Commercial transfer facility" means a transfer facility owned or operated by a commercial for-hire transporter and in which the major purpose of the commercial transfer facility is the collection, storage, and transfer of hazardous wastes; that is, over 50% of the materials moved through the commercial transfer facility are hazardous wastes, or greater than 100 tons of materials moved through the commercial transfer facility per year are hazardous wastes. The term "commercial for-hire transporter" refers to a transporter who conducts transportation activity on a commercial basis, as opposed to a transporter that is the same business entity as the generator.

(d) "Department" means the Montana department of environmental quality provided for in 2-15-3501, MCA.

(e) "Major HWM facility" means any HWM facility or activity classified as such by the department, in consultation with the EPA.

(f) "Registration fee" means the annual fee assessed to generators by the department pursuant to the Act and [RULE IX].

(g) "Registration year" means a calendar year for which generator registration is required and for which a registration fee is assessed.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XVIII NO STATE WASTE DELISTING - FEDERAL PETITION REQUIRED (1) Waste generators may demonstrate that their wastes do not meet criteria utilized by EPA to list hazardous wastes. A successful petition results in that waste being excluded from regulation as a hazardous waste--often referred to as waste "delisting". Petitions by Montana generators to delist a hazardous waste must be filed with EPA.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XIX ADOPTION OF FEDERAL PROCEDURES FOR VARIANCES FROM CLASSIFICATION AS A WASTE OR BOILER (1) The department hereby adopts and incorporates by reference the standards, criteria, and procedures for granting variances from classification as a waste or boiler, contained in 40 CFR 260.30 through 40 CFR 260.33, with the exception specified below.

(2) In 40 CFR 260.33(a), the words "in the region where the recycler is located" are not adopted and incorporated by reference.

AUTH: 75-10-404, 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XX ADOPTION OF FEDERAL PROCEDURES FOR ADDITIONAL REGULATION OF CERTAIN HAZARDOUS WASTE RECYCLING ACTIVITIES

(1) The department hereby adopts and incorporates by reference the standards, criteria, and procedures for the case-by-case regulation of certain hazardous waste recycling activities contained in 40 CFR 260.40 and 260.41.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XXI ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261)

(1) Except as provided otherwise in [RULE XXII], the department hereby adopts and incorporates by reference 40 CFR 261, pertaining to identification of wastes regulated as hazardous waste.

AUTH: 75-10-204, 75-10-404, 75-10-405, MCA  
IMP: 75-10-203, 75-10-204, 75-10-403, 75-10-405, 75-10-602, MCA



RULE XXII EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

(1) This subchapter identifies only some of the materials that are hazardous wastes. A material that is not a hazardous waste as identified in this subchapter is still a hazardous waste if, during an inspection under 75-10-410, MCA, the department has reason to believe that the material may be a hazardous waste within the meaning of 75-10-403, MCA, or meets the statutory elements of 75-10-415, MCA.

(2) The following language is substituted for the language in 40 CFR 261.2(f), adopted and incorporated by reference in [RULE XXI]: "Respondents in actions to enforce this chapter who claim that a certain material is not a waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that the respondent meets the terms of the exclusion or exemption. In doing so, the respondent must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so."

(3) In addition to the requirements in 40 CFR 261.6(c)(2), owners or operators of facilities that legitimately recycle materials without storing them before they are recycled are subject to 40 CFR 265.10 through 265.77.

(4) In 40 CFR 261.4(e)(3)(iii) the words "in the Region where the sample is collected" are not adopted and incorporated by reference.

(5) 40 CFR 261, Appendix IX, is not adopted and incorporated by reference.

(6) In 40 CFR 261.21(a)(3), "a flammable gas as defined in 49 CFR 173.115(a)" is substituted for "an ignitable compressed gas as defined in 49 CFR 173.300".

(7) In 40 CFR 261.21(a)(4), "an oxidizer as defined in 49 CFR 173.127" is substituted for "an oxidizer as defined in 49 CFR 173.151".

(8) "It is a forbidden explosive as defined in 49 CFR 173.54; or would have been a Class A or B explosive as defined in 49 CFR 173.52 and 53." is substituted for 40 CFR 261.23(a)(8).

AUTH: 75-10-204, 75-10-404, 75-10-405, MCA

IMP: 75-10-203, 75-10-204, 75-10-403, 75-10-405, 75-10-602, MCA

RULE XXIII ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262)

(1) Except as provided otherwise in [RULE XXIV], the department hereby adopts and incorporates by reference 40 CFR 262, pertaining to hazardous waste generator standards.

AUTH: 75-10-204, 75-10-404, 75-10-405, MCA  
IMP: 75-10-204, 75-10-405, MCA

RULE XXIV EXCEPTIONS AND ADDITIONS TO ADOPTION OF  
FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

- (1) [RULE XXV] is substituted for 40 CFR 262.41, pertaining to biennial reporting.
- (2) In 40 CFR 262.42(a)(2), pertaining to exception reporting, the words "in the Region in which the generator is located" are not adopted and incorporated by reference.
- (3) [RULE XXVI] is substituted for 40 CFR 262.43, pertaining to additional reporting requirements.
- (4) In 40 CFR 262.51, 262.52, 262.53, 262.54, 262.56, and 262.57, pertaining to exports of hazardous waste, references to "EPA" are retained.
- (5) Exception reports required from primary exporters pursuant to 40 CFR 262.55 must be filed with EPA and the department.
- (6) Annual reports required from primary exporters pursuant to 40 CFR 262.56 must be filed with EPA and the department.
- (7) In 40 CFR 262.57(b), pertaining to export record keeping, the reference to the "Administrator" is retained. The department may also require extensions of record retention times for hazardous waste export records.
- (8) Conditionally exempt small quantity generators are not subject to the requirements of [RULE XXV].

AUTH: 75-10-204, 75-10-404, 75-10-405, MCA  
IMP: 75-10-204, 75-10-225, 75-10-405, MCA

RULE XXV ANNUAL REPORT FROM GENERATORS WHO SHIP  
HAZARDOUS WASTE OFF-SITE

(1) A generator who ships his hazardous waste off-site to a designated facility within the United States shall submit annual reports to the department, on forms obtained from the department, no later than March 1 of each year. The annual report must cover generator activities during the previous calendar year and must include the following information:

- (a) the EPA identification number, name, and address of the generator;
- (b) the calendar year covered by the report;
- (c) the EPA identification number, name, and address for each off-site facility in the United States to which waste was shipped during the year;
- (d) the name and EPA identification number of each transporter used during the reporting year for shipments to a facility within the United States;
- (e) a description, EPA hazardous waste number, DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a facility within the United States. This information must be listed by the EPA identification number of each off-site facility to which waste was shipped;

(f) a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(g) a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years; and

(h) the certification signed and dated by the generator or the generator's authorized representative, made in accordance with 40 CFR 270.11.

(2) Any generator who treats, stores, or disposes of hazardous waste on-site must submit an annual report covering those wastes in accordance with the provisions of subchapters 8, 9, and 12 of this chapter.

(3) Reporting for exports of hazardous waste is subject to the requirements of 40 CFR 262.56 rather than the requirements of this rule.

AUTH: 75-10-404, 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XXVI ADDITIONAL REPORTING REQUIREMENTS (1) The department, as deemed necessary under 75-10-404, MCA, may require generators to furnish additional reports concerning the quantities and disposition of hazardous wastes identified or listed in this chapter.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XXVII ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263) (1) Except as provided otherwise in [RULE XXVII], the department hereby adopts and incorporates by reference 40 CFR 263, pertaining to requirements for transporters of hazardous waste.

AUTH: 75-10-204, 75-10-404, 75-10-405, MCA  
IMP: 75-10-204, 75-10-212, 75-10-214, 75-10-221, 75-10-405, 75-10-406, MCA

RULE XXVIII EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (1) All references to "EPA", "United States", and "Administrator" are retained.

(2) In addition to the transfer facility requirements of 40 CFR 263.12, a transfer facility is subject to [RULE XXX through RULE XXXII].

(3) The period of retention of records referred to in 40 CFR 263.22(e) may be extended by the department as well as by EPA.

(4) Copies of the manifest, as required under 40 CFR 263.22(a), must be maintained on file at the transfer facility location for all hazardous waste shipments that are transported to a transfer facility.

(5) In addition to the notices and reports required by 40 CFR 263.30 in the event of discharges of hazardous waste

during transportation, the transporter shall also notify the department by immediately contacting the Montana hazardous materials emergency response system (406-841-3911).

AUTH: 75-10-204, 75-10-404, 75-10-405, MCA  
IMP: 75-10-204, 75-10-212, 75-10-214, 75-10-221, 75-10-405, 75-10-406, MCA

RULE XXIX TRANSPORTER REGISTRATION (1) In addition to the requirements of [RULE VII] and 40 CFR 263.11 for obtaining an EPA identification number, transporters who maintain offices, terminals, depots, or transfer facilities within Montana related to their hazardous waste transportation activities shall register with the department. Montana registration is not required for out-of-state transporters whose activities are limited to passing through Montana with hazardous waste loads or whose activities are limited to picking up loads from Montana generators or delivering loads to designated facilities in Montana.

(2) Transporter registration is not subject to any fee.

(3) To obtain registration, a transporter shall provide, at a minimum, the following information on forms provided by the department:

(a) business name and mailing address;

(b) EPA identification number (if one has already been assigned);

(c) contact person(s) and contact phone number(s);

(d) the locations of all of the transporter's hazardous waste transportation-related offices, terminals, depots, and/or transfer facilities situated within Montana;

(e) the mode(s) of hazardous waste transportation employed; and

(f) whether the transporter and generator are the same person or whether the transportation activity is done on a commercial for-hire basis.

(4) Registration remains in effect for 3 years. Upon expiration, the department shall notify the transporter and provide appropriate forms for renewing the registration. Registration is transferable to a new owner or operator upon written notice to the department and proper updating of all pertinent registration information on file with the department.

AUTH: 75-10-204, 75-10-405, MCA  
IMP: 75-10-204, MCA

RULE XXX TRAINING OF TRANSFER FACILITY PERSONNEL

(1) Transfer facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in compliance with the requirements of this rule and [RULE XXXI AND RULE XXXII].

(2) At a minimum, the training program must be designed to ensure that transfer facility personnel are able to respond

to emergencies by familiarizing the transfer facility personnel with emergency procedures, emergency equipment, and emergency systems.

(3) Transfer facility personnel shall successfully complete the required training program within 6 months after the first day of their employment. Employees may not work in unsupervised positions until they have completed the required training.

(4) Transfer facility personnel shall take part in an annual review of the initial training required in (1) of this rule.

(5) The owner or operator of a transfer facility shall maintain the following documents and records at the facility:

(a) the job title for each position at the transfer facility related to hazardous waste management, and the name of the employee filling each job;

(b) a written description of the type and amount of both introductory and continuing training that will be given to each person filling each position related to hazardous waste management; and

(c) records documenting that the training or job experience required under (1) and (2) of this rule has been provided to, and completed by, transfer facility personnel.

(6) Training records on current personnel must be kept until closure of the transfer facility. Training records on former employees must be kept for at least 3 years from the date the employee last worked at the transfer facility. Personnel training records may accompany personnel transferred within the same company.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XXXI EMERGENCY PREPAREDNESS, PREVENTION, AND RESPONSE AT TRANSFER FACILITIES (1) Transfer facility owners and operators shall comply with the emergency preparedness and prevention requirements set forth in 40 CFR 265, subpart C.

(2) Transfer facility owners and operators shall also comply with the following additional emergency planning and response requirements:

(a) At all times during which hazardous wastes are temporarily stored at the transfer facility there must be an emergency coordinator or a trained designee who is on the premises or on call and available to respond to an emergency by reaching the facility within a short period of time. The emergency coordinator shall coordinate all emergency response measures specified in (2)(c) below.

(b) The transfer facility owner or operator shall post the following information next to the telephone:

(i) the name and telephone number of the emergency coordinator;

(ii) the location of fire extinguishers and spill control material and, if present, fire alarm;

(iii) the telephone number of the local fire department, unless the transfer facility has a direct alarm; and

(iv) the name, address, and EPA identification number of the transfer facility.

(c) The emergency coordinator or the coordinator's designee shall respond to any emergencies that arise by formulating a contingency plan under the guidelines of 40 CFR 265, Subpart D, and by making appropriate responses. Appropriate responses include the following:

(i) In the event of a fire, the emergency coordinator shall call the fire department and/or attempt to extinguish the fire using a fire extinguisher.

(ii) In the event of a spill, the emergency coordinator shall first determine whether the conditions under (2)(c)(iii) below apply and, if so, the emergency coordinator shall follow the steps in (2)(c)(iii); then the emergency coordinator shall contain the flow of hazardous waste to the extent possible, and as soon as is practicable, appropriately clean up the hazardous waste and any contaminated materials or soil.

(iii) In the event of a fire, explosion, spill or other release event that could threaten human health or when the emergency coordinator has knowledge that a spill has reached surface water, the emergency coordinator shall immediately notify the national response center (800-424-8802) and the department (using the 24-hour telephone number, 406-841-3911). The notifications must include the following information:

(A) the name, address, and EPA identification number of the transfer facility;

(B) the date, time, and type of incident (e.g., spill or fire);

(C) the quantity and type of hazardous waste involved in the incident;

(D) the extent of injuries, if any; and

(E) the estimated quantity and disposition of recovered materials, if any.

AUTH: 75-10-405, MCA

IMP: 75-10-405, MCA

RULE XXXII TRANSFER FACILITY CONTAINER HANDLING REQUIREMENTS

(1) During hazardous waste unloading, transfer, and loading operations, each hazardous waste container must be visually inspected for evidence of corrosion, pressure buildup, physical damage, or leakage. Questionable containers must be set aside for further evaluation and possible repackaging and/or return to the waste generator. Leaking containers may not be loaded back onto a transportation vehicle, trailer, or railcar unless and until they are properly packaged, labeled, and marked according to 40 CFR 262.30 through 262.32.

(2) All handling of hazardous waste containers must be conducted in a manner that minimizes the risk of leaks, spills, releases, or similar accidents. Hazardous waste containers may not be opened unless necessary to correct contain-

er damage or leakage of the contents, and the generator's consent must be obtained for any necessary repackaging.

(3) Loading docks, temporary container storage areas, and all areas where transfer of hazardous wastes occurs must have a base or floor that is smooth, free of cracks or gaps, and sufficiently impervious to contain leaks or spills until the spilled material is detected and removed. Temporary storage areas must be designed with a containment system having sufficient capacity to contain, at a minimum, 10 times the volume of the largest container that will be stored there. Any leaks or spills that do occur must be promptly cleaned up by the transfer facility operator.

(4) Containers of ignitable or reactive waste must be handled and stored in a manner so as to prevent accidental ignition or reaction of the waste. Such waste containers must be separated and protected from sources of ignition or reaction (e.g., open flames, sparks, cigarette smoking, cutting and welding activities, hot surfaces, frictional heat, spontaneous ignition, and radiant heat). "NO SMOKING" signs must be conspicuously placed wherever there is or may be a hazard from ignitable or reactive wastes.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XXXIII COMMERCIAL TRANSFER FACILITY REQUIREMENTS

(1) A commercial transfer facility is subject to [RULE XXVIII(5)] and [RULE XXX through RULE XXXII], and the public hearing requirements of 75-10-441, MCA.

(2) The owner or operator of a commercial transfer facility shall prepare and submit a written annual report to the department by March 1 of each year. The report must cover transfer facility activities during the previous calendar year, and must include the following information:

(a) the EPA identification number, name, and address of the transfer facility;

(b) the calendar year covered by the report;

(c) a summary of all hazardous wastes that the commercial transfer facility handled during the report year, organized by EPA hazardous waste number and showing quantitative waste totals for each waste type;

(d) a written summary of each hazardous waste leak, spill, fire, or similar incident that occurred in the report year, including the response actions taken, the cause of the incident, and a legible copy of the pertinent waste manifests(s) for the hazardous wastes involved in the incident; and

(e) a certification signed and dated by the owner or operator of the transfer facility or an authorized representative, worded as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and where I haven't

personally obtained the information, I have made inquiry of those individuals immediately responsible for obtaining the information, about the truth and accuracy of the information contained in this document. I certify that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XXXIV ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264) (1) Except as provided otherwise in [RULE XXXV], the department hereby adopts and incorporates by reference 40 CFR 264, pertaining to standards for owners and operators of hazardous waste treatment, storage and disposal facilities.

AUTH: 75-10-404, 75-10-405, 75-10-406, MCA  
IMP: 75-10-405, 75-10-406, MCA

RULE XXXV EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

(1) "The purpose of this rule is to establish minimum standards that define the acceptable management of hazardous waste at state permitted facilities." is substituted for 40 CFR 264.1(a), pertaining to the scope of federal standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities.

(2) In 40 CFR 264.4, pertaining to imminent hazard action, "75-10-415, MCA" is substituted for "7003 of RCRA".

(3) In 40 CFR 264.12(a), pertaining to required notices, the reference to "Regional Administrator" is retained.

(4) [RULE XXXVI] is substituted for 40 CFR 264.75, pertaining to biennial reports.

(5) 40 CFR 264.149 and 264.150, pertaining to use of state required mechanisms and state assumption of responsibility, are not adopted and incorporated by reference.

(6) The standards set forth in this subchapter do not apply to owners or operators of solid waste management systems licensed by the department pursuant to ARM Title 17, chapter 50, subchapter 5, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation by the requirements for conditionally exempt generators in 40 CFR 262.

(7) In 40 CFR 264.191(a), pertaining to tank integrity assessments, "January 12, 1992" is substituted for "January 12, 1988".

(8) In 40 CFR 264.191(c), "date that the waste becomes a state regulated hazardous waste" is substituted for "date that the waste becomes a hazardous waste".



(9) In 40 CFR 264.193(a)(2), pertaining to the compliance date for providing secondary containment for tanks, "January 12, 1992" is substituted for "within two years after January 12, 1987".

(10) In 40 CFR 264.193(a)(3), pertaining to the compliance date for providing secondary containment for tanks, "January 12, 1992" is substituted for "within two years after January 12, 1987".

(11) In 40 CFR 264.193(a)(4), "within five years of January 12, 1991" is substituted for "within eight years of January 12, 1987".

(12) In 40 CFR 264.193(a)(5), "date that a material becomes a state regulated hazardous waste" is substituted for "date that a material becomes a hazardous waste".

(13) In 40 CFR 264.221(e)(2)(i)(C), pertaining to design and operating requirements for surface impoundments, "with final state permits" is substituted for "permits under RCRA Section 3005(c)".

(14) 40 CFR 264.301(l), pertaining to design and operating requirements for landfills, is not adopted and incorporated by reference.

(15) In 40 CFR 264.316(b), pertaining to lab packs, "(49 CFR Part 178)" is substituted for "(49 CFR Parts 178 and 179)".

(16) In 40 CFR 264.316(f), pertaining to fiber drums, "non-metal containers" is substituted for "fiber drums".

AUTH: 75-10-404, 75-10-405, 75-10-406, MCA

IMP: 75-10-405, 75-10-406, MCA

RULE XXXVI ANNUAL REPORT FROM FACILITIES (1) The owner or operator of a permitted hazardous waste management facility shall prepare and submit an annual report to the department, on forms obtained from the department, by March 1 of each year. The annual report must cover facility activities during the previous calendar year and must include the following information:

(a) the EPA identification number, name, and address of the facility;

(b) the calendar year covered by the report;

(c) for off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year. For imported shipments, the report must state the name and address of the foreign generator;

(d) a description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator;

(e) the method of treatment, storage and disposal for each hazardous waste;

(f) the most recent closure cost estimate under 40 CFR 264.142 or 265.142, and for disposal facilities the most

recent post-closure cost estimate under 40 CFR 264.144 or 265.144;

(g) for generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of hazardous waste generated;

(h) for generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of hazardous waste actually achieved during the year in comparison to previous years; and

(i) a certification made in accordance with 40 CFR 270.11 and signed and dated by the owner or operator of the facility or an authorized representative.

AUTH: 75-10-204, 75-10-405, MCA  
IMP: 75-10-204, MCA

RULE XXXVII ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265) (1) Except as provided otherwise in [RULE XXXVIII], the department hereby adopts and incorporates by reference 40 CFR 265, pertaining to interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities.

AUTH: 75-10-404, 75-10-405, MCA  
IMP: 75-10-405, 75-10-406, MCA

RULE XXXVIII EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

(1) In 40 CFR 265.1(a), pertaining to the scope of permits, "state" is substituted for "national".

(2) In 40 CFR 265.1(b), pertaining to the scope of permits, "subchapter 12, the state permitting program" is substituted for "section 3005 of RCRA" in both places where it appears.

(3) In 40 CFR 265.4, pertaining to imminent hazard action, "75-10-415, MCA" is substituted for "7003 of RCRA".

(4) [RULE XXXIX] is substituted for 40 CFR 265.75, pertaining to biennial reports.

(5) 40 CFR 265.149 and 265.150, pertaining to use of state required mechanisms and state assumption of responsibility, are not adopted and incorporated by reference.

(6) 40 CFR 265, Subpart R, pertaining to underground injection, is not adopted and incorporated by reference.

(7) 40 CFR 265, Appendices I, III, and IV, pertaining to record keeping instructions, EPA primary drinking water standards and statistical tests, are not adopted and incorporated by reference.

(8) In 40 CFR 265.191(a), pertaining to the compliance date for providing tank integrity assessments, "January 12, 1992" is substituted for "January 12, 1988".

(9) In 40 CFR 265.191(c), pertaining to the compliance date for providing tank integrity assessments, "date that the waste becomes a state regulated hazardous waste" is substituted for "date that the waste becomes a hazardous waste".

(10) In 40 CFR 265.193(a)(2), pertaining to the compliance date for providing secondary containment for tanks, "January 12, 1992" is substituted for "within two years after January 12, 1987".

(11) In 40 CFR 265.193(a)(3), pertaining to the compliance date for providing secondary containment for tanks, "January 12, 1992" is substituted for "within two years after January 12, 1987".

(12) In 40 CFR 265.193(a)(4), "within five years of January 12, 1991" is substituted for "within eight years of January 12, 1987".

(13) In 40 CFR 265.193(a)(5), "date that a material becomes a state regulated hazardous waste" is substituted for "date that a material becomes a hazardous waste".

(14) In 40 CFR 265.301(d)(2)(i)(B), pertaining to the definition of the term "underground source of drinking water", "40 CFR 270.2" is substituted for "144.3 of this chapter".

(15) In 40 CFR 265.301(d)(2)(i)(C), "subchapter 12, the state permitting program" is substituted for "RCRA Section 3005(c)".

(16) In 40 CFR 265.314(g)(2), pertaining to the definition of the term "underground source of drinking water", "40 CFR 270.2" is substituted for "144.3 of this chapter".

(17) In 40 CFR 265.316(b), pertaining to lab packs, "(49 CFR Part 178)" is substituted for "(49 CFR Parts 178 and 179)".

(18) In 40 CFR 265.316(f), "non-metal containers" is substituted for "fiber drums".

AUTH: 75-10-404, 75-10-405, MCA  
IMP: 75-10-405, 75-10-406, MCA

RULE XXXIX ANNUAL REPORT (1) The owner or operator of an interim status hazardous waste management facility shall prepare and submit an annual report to the department by March 1 of each year, on forms obtained from the department. The report must cover facility activities during the previous calendar year and must include the following information:

(a) the EPA identification number, name, and address of the facility;

(b) the calendar year covered by the report;

(c) for off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year. For imported shipments, the report must give the name and address of the foreign generator;

(d) a description and the quantity of each hazardous waste the facility received during the year. For off-site

facilities, this information must be listed by EPA identification number of each generator;

(e) the method of treatment, storage and disposal for each hazardous waste;

(f) monitoring data required under 40 CFR 265.94(a)(2)(ii) and (iii), and (b)(2), where required;

(g) the most recent closure cost estimate under 40 CFR 264.142 or 265.142, and for disposal facilities the most recent post-closure cost estimate under 40 CFR 264.144 or 265.144;

(h) for generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(i) for generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years; and

(j) a certification made in accordance with 40 CFR 270.11 and signed and dated by the owner or operator of the facility or an authorized representative.

AUTH: 75-10-404, 75-10-405, MCA

IMP: 75-10-405, MCA

RULE XL ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266) (1) Except as provided otherwise in [RULE XLI], the department hereby adopts and incorporates by reference 40 CFR 266, pertaining to standards for management of specific hazardous wastes and specific types of hazardous waste management facilities.

AUTH: 75-10-405, MCA

IMP: 75-10-405, MCA

RULE XLI EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

(1) Additional hazardous wastes or wastes that may not be burned in a boiler or an industrial furnace are described in [RULE XLII].

(2) The following is substituted for 40 CFR 266.80(b), pertaining to spent lead acid batteries being reclaimed: "Owners or operators of facilities that store spent lead acid batteries before reclaiming them, other than spent batteries that are to be regenerated, are subject to the following requirements:

(A) Notification requirements under Section 3010 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.;

(B) All applicable provisions in the following subparts of 40 CFR 264:

(i) Subpart A through subpart B, excluding 40 CFR 264.13;

(ii) Subpart C through subpart E, excluding 40 CFR 264.71 and 40 CFR 264.72; and

(iii) Subpart F through subpart L.

(C) All applicable provisions in the following subparts of 40 CFR 265:

(i) Subpart A through subpart B, excluding 40 CFR 265.13;

(ii) Subpart C through subpart E, excluding 40 CFR 265.71 and 40 CFR 265.72; and

(iii) Subpart F through subpart L; and

(D) All applicable provisions in 40 CFR 270 and 40 CFR 124."

(3) In addition to the requirements in 40 CFR 266.102 for burners of hazardous waste in boilers or industrial furnaces, [RULE XLVIII] contains a requirement to perform background and periodic testing of soils and water.

(4) In 40 CFR 266.102(b)(1), pertaining to hazardous waste analyses, the words "or, for facilities operating under interim status standards of this subpart, as a portion of the trial burn plan that may be submitted before the part B application under provisions of 40 CFR 270.66(g) of this chapter" and "not operating under the interim status standards" are not adopted and incorporated by reference.

(5) 40 CFR 266.102(d)(3), pertaining to permitting provisions for boilers and industrial furnaces operating under interim status standards, is not adopted and incorporated by reference.

(6) In 40 CFR 266.102(d)(4), pertaining to permit standards for burners, the words "new" and "(those boilers and industrial furnaces not operating under the interim status standards)" are not adopted and incorporated by reference.

(7) The following is substituted for 40 CFR 266.102(e)(3)(ii), pertaining to startup and shutdown of a boiler or industrial furnace: "In conjunction with the permit application, the department may require the owner or operator of a boiler or an industrial furnace to submit a plan that will require a cessation of the burning of hazardous waste during prolonged inversion conditions. The department shall consider the proximity of the boiler or industrial furnace to populated areas when determining the need for such a plan. The plan, if determined to be necessary by the department, must include an ambient air monitoring program to establish the conditions under which the burning will be halted and under which it may then be resumed, unless the owner or operator provides an alternate method for determining such conditions."

(8) In 40 CFR 266.102(e)(8)(i)(C), pertaining to specifications for monitoring and inspections for a boiler or industrial furnace burning hazardous waste, the following is added at the end of paragraph (C): "Stack emissions must be sampled and tested, at the owner or operator's expense, on at least an annual basis. The constituents to be tested and the conditions of the testing are established during the permit application or permit review process. The results must be compared to conditions established during the trial burn."

Test results must be submitted to the department in accordance with the schedule specified in the permit."

(9) The following is substituted for 40 CFR 266.103(a)(1)(ii), pertaining to interim status standards for boilers and industrial furnaces: "A boiler or industrial furnace may not be operated under interim status unless it was in operation burning or processing hazardous waste on or before August 21, 1991; facilities for which construction to burn or process hazardous waste had commenced, but that were not in operation as of that date, do not qualify for interim status."

(10) 40 CFR 266.104(a)(3) through (5), pertaining to standards to control organic emissions, is not adopted and incorporated by reference. Refer to additional information in [RULE XLII].

(11) The following is substituted for 40 CFR 266.104(e) and (e)(1): "(e) Controls for dioxins and furans. Owners and operators of boilers and industrial furnaces shall conduct a site-specific risk assessment as follows to demonstrate that emissions of chlorinated dibenzo-p-dioxins (PCDDs) and dibenzofurans (CDDs/CDFs) do not result in an increased lifetime cancer risk to the hypothetical maximum exposed individual (MEI) exceeding 1 in 100,000 (this provision may be waived if the owner or operator of the facility can demonstrate, to the satisfaction of the department, that raw materials and fuels used are such that dioxins and furans would not be present in waste residues or emissions):

(1) During the trial burn, determine emission rates of the tetra-octa congeners of PCDDs and CDDs/CDFs using Method 0023A, 'Sampling Method for Polychlorinated Dibenzop-Dioxins and Polychlorinated Dibenzofurans Emissions from Stationary Sources', from EPA Publication SW-846."

(12) 40 CFR 266.105(b), pertaining to standards to control particulate matter, is not adopted and incorporated by reference.

(13) 40 CFR 266.109 and 266.110, pertaining to low risk waste exemption and waiver of destruction and removal efficiency (DRE) trial burn for boilers, are not adopted and incorporated by reference.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XLII HAZARDOUS WASTES AND OTHER WASTES THAT MAY NOT BE BURNED IN A BOILER OR INDUSTRIAL FURNACE (1) The following hazardous wastes or wastes derived from any of the following wastes may not be burned in a boiler or industrial furnace: Materials identified with EPA hazardous waste numbers D017, D037, D041, D042, F020, F021, F022, F023, F026, F027, F028, F032, and K001 (containing pentachlorophenol).

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XLIII BACKGROUND AND PERIODIC TESTING OF SOILS, SURFACE WATERS AND AQUIFERS (1) The owners and operators of boilers and industrial furnaces burning hazardous waste shall perform background and periodic testing of soils, surface waters and aquifers.

(2) Soils must be sampled and analyzed for total metals and pH, or other constituents as determined by the department, from surface locations that are predominantly downwind of the stack or facility. The number of samples and locations is determined during the permit application or permit review process. Background samples must be tested prior to burning hazardous waste. Soil samples must be taken on an annual basis. The results of the annual sampling must be compared to the background results.

(3) Surface waters must be sampled and analyzed for total metals and pH, or other constituents as determined by the department, from surface locations that are predominantly downstream from the stack or facility. This requirement does not apply if there are no streams, rivers, lakes or wetlands within one mile of the boiler or industrial furnace. The number of samples and locations is determined during the permit application or permit review process. Background samples must be tested prior to burning hazardous waste. Surface water samples must be taken on an annual basis. The results of the annual sampling must be compared to the background results.

(4) Groundwater from the uppermost aquifer underlying the property must be sampled and analyzed for total metals and pH, or other constituents as determined by the department, if it is determined during the permit application or permit review process that aquifer testing is warranted. This determination must be made by the department based, in part, on review of the Part B application regarding known geologic and hydrogeologic conditions underlying the site, including use of the aquifer. If required, the number of samples and locations is determined during the permit review process. Background samples must be tested prior to burning hazardous waste. Groundwater must be sampled on an annual basis. The results of the annual sampling must be compared to the background results.

(5) Sampling and analysis must be in conformance with procedures described in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods. The statistical methodology is the same employed for Bevill residue determinations as described in 40 CFR 266, Appendix IX. That is, the annual samples (taken after hazardous wastes are burned) must be compared to background samples for the constituents of concern. The 95% confidence interval in relation to the mean of the background levels must be used in the comparison of the annual and background samples. The concentration of a constituent in the annual sample is not considered to be significantly higher than in the background sample if the concentration does not exceed the upper limit of the 95%

confidence interval in relation to the mean that was established for the background level.

(6) The results of the sampling and analysis program for soils, surface waters and aquifers are evaluated at the time of permit application or permit review. The department shall use the results to evaluate the possibility of interference from sources other than the boiler or industrial furnace. If the department determines that statistically increased contamination from the facility is apparent, then the department may require additional testing, restrict the feed rates of certain hazardous wastes, deny reissuance of the permit or revoke the permit.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XLIV ADOPTION OF FEDERAL LAND DISPOSAL RESTRICTIONS  
(40 CFR 268) (1) Except as provided otherwise in [RULE XLV], the department hereby adopts and incorporates by reference 40 CFR 268, pertaining to land disposal restrictions.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA

RULE XLV EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL LAND DISPOSAL RESTRICTIONS (1) The department is not adopting and incorporating by reference the authority to grant the following exemptions to land disposal restrictions, which may be granted only by the administrator of EPA:

- (a) case-by-case extensions of federal effective dates, pursuant to 40 CFR 268.5;
- (b) allowance of land disposal of a waste prohibited under 40 CFR 268, Subpart C, pursuant to a petition filed under 40 CFR 268.6;
- (c) approval of alternate treatment methods, pursuant to 40 CFR 268.42(b); and
- (d) exemption from a treatment standard, pursuant to 40 CFR 268.44.

(2) For the reason described in (1) above, the following federal regulations are not adopted and incorporated by reference:

- (a) 40 CFR 268.5;
- (b) 40 CFR 268.6;
- (c) 40 CFR 268.42(b); and
- (d) 40 CFR 268.44.

(3) "Hazardous wastes that are not identified or listed in 40 CFR 268, subpart C, as incorporated in this rule" is substituted for 40 CFR 268.1(e)(3), pertaining to hazardous waste not subject to land disposal restrictions.

(4) In 40 CFR 268.40, pertaining to treatment standards, the term "Administrator" is retained.

AUTH: 75-10-405, MCA  
IMP: 75-10-405, MCA



RULE XLVI ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270) (1) Except as provided otherwise in [RULE XLVII], the department hereby adopts and incorporates by reference 40 CFR 270, pertaining to federal procedures for a state administered permit program.

AUTH: 75-10-404, 75-10-405, MCA  
IMP: 75-10-405, 75-10-406, MCA

RULE XLVII EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM

(1) "This rule establishes provisions for the state hazardous waste program pursuant to Title 75, chapter 10, part 4, MCA." is substituted for 40 CFR 270.1(a), pertaining to RCRA regulation coverage.

(2) 40 CFR 270.1(b), pertaining to the overview of the RCRA permit program, is not adopted and incorporated by reference.

(3) "Owners and operators of facilities that require a surface water discharge permit under Title 75, chapter 5, MCA, and rules implementing that chapter, and that treat, store or dispose of hazardous waste must obtain a hazardous waste management permit for such facilities." is substituted for 40 CFR 270.1(c)(1), pertaining to the scope of RCRA permit requirements.

(4) The following is added to the permitting exclusions listed in 40 CFR 270.1(c)(3): "Injection wells that dispose of hazardous waste are not subject to the permitting requirements of this subchapter but may be subject to regulation by EPA. However, where injection wells have associated surface facilities that treat, store, or dispose of hazardous waste, such associated surface facilities are subject to the permitting requirements of this subchapter."

(5) The following is substituted for 40 CFR 270.1(c)(3)(iii): "In the case of an explosives or munitions emergency response, if a federal, state, tribal or local official acting within the scope of official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition."

(6) 40 CFR 270.3, pertaining to federal laws that apply to RCRA permits, is not adopted and incorporated by reference.

(7) 40 CFR 270.5, pertaining to noncompliance in program reporting by the department, is not adopted and incorporated by reference.

(8) The following is added to the general application requirements in 40 CFR 270.10(a) through (f):

"(g) All applications must be accompanied by the appropriate fees as provided in these rules.

(h) Any application submitted to EPA and deemed by EPA to be complete shall be considered to be complete by the department.

(i) The requirements of this chapter must be coordinated with but do not alter the applicable requirements for new facilities set forth in Title 75, chapter 20, MCA, Montana Major Facility Siting Act."

(9) [RULE XIV] is substituted for 40 CFR 270.12, pertaining to confidentiality of information.

(10) 40 CFR 270.14(b)(18), pertaining to proof of coverage by state financial mechanism, is not adopted and incorporated by reference.

(11) 40 CFR 270.14(b)(20), pertaining to permit application materials needed to comply with federal laws that apply to RCRA permits, is not adopted and incorporated by reference.

(12) 40 CFR 270.22(a)(1)(ii), (a)(2), (a)(4), and (a)(6), pertaining to trial burns, are not adopted and incorporated by reference.

(13) "An annual report must be submitted covering facility activities." is substituted for 40 CFR 270.30(1)(9), pertaining to biennial reports.

(14) In 40 CFR 270.32(a), pertaining to case-by-case permit conditions, references to "alternate schedules of compliance" and "considerations under federal law" are applicable only to federally issued permits.

(15) The following is substituted for 40 CFR 270.32(c), pertaining to "applicable requirements": "(a) An applicable requirement is a statutory or regulatory requirement that takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement that takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed under 40 CFR 270.41.

(b) If new requirements become effective, including any interim final regulations, during the permitting process that:

(i) precede modification, or revocation and reissuance, of a permit to the extent allowed in this rule; and

(ii) are of sufficient magnitude to make additional proceedings desirable, the department may reopen the comment period."

(16) In 40 CFR 270.41(a)(5), pertaining to cause for permit modification, ", boiler, or industrial furnace" is added after "land disposal facility".

(17) 40 CFR 270.42(i), pertaining to the permit modification list, is not adopted and incorporated by reference.

(18) In 40 CFR 270.50(d), pertaining to duration of permits, ", boiler, or industrial furnace" is added after "land disposal facility".

(19) 40 CFR 270.60(a) and (b), pertaining to permits by rule for ocean disposal barges and injection wells, are not adopted and incorporated by reference.

(20) The following is added to the regulations concerning publicly owned treatment works in 40 CFR 270.60(c)(3): "[RULE VIII], Facility Permit Fees: Application, Renewal, Modification, and Maintenance Fees."

(21) 40 CFR 270.64, pertaining to interim status for underground injection controls, is not adopted and incorporated by reference.

AUTH: 75-10-404, 75-10-405, MCA  
IMP: 75-10-405, 75-10-406, MCA

RULE XLVIII VALIDITY OF FEDERAL HAZARDOUS WASTE MANAGEMENT PERMITS

(1) Hazardous waste management facilities located in Montana that possessed an effective final hazardous waste management permit issued by EPA prior to September 16, 1983 (the effective date of former Title 17, chapter 54, subchapter 1) are considered to possess a valid Montana hazardous waste management permit for the duration of the unexpired term of the federal permit, if the facility remains in compliance with all the conditions specified in the federal permit and the requirements of this chapter.

AUTH: 75-10-404, 75-10-405, MCA  
IMP: 75-10-405, 75-10-406, MCA

RULE XLIX ADOPTION OF FEDERAL UNIVERSAL WASTE RULE (40 CFR 273)

(1) Except as provided otherwise in [RULE L], the department hereby adopts and incorporates by reference 40 CFR 273, pertaining to the universal waste rule.

(2) For the purposes of this subchapter, the department hereby adopts and incorporates by reference the final rules published at 64 FR 36465 on July 6, 1999, "Hazardous Waste Management System; Modification of the Hazardous Waste Program; Hazardous Waste Lamps", to be codified at 40 CFR 260.10, 261.9, 264.1, 265.1, 268.1, 270.1, and 40 CFR 273 Subparts A, B, C, D, E, and G.

AUTH: 75-10-405, MCA  
IMP: 75-10-404, 75-10-405, MCA

RULE L EXCEPTIONS AND ADDITIONS TO ADOPTION OF UNIVERSAL WASTE RULE

(1) In 40 CFR 273.20(b) and (c), 273.40(b) and (c), and 273.56, pertaining to exporters of universal waste, the term "EPA" is retained.

(2) [RULE LI] contains the requirements for treatment of electric lamps.

AUTH: 75-10-405, MCA

IMP: 75-10-404, 75-10-405, MCA

RULE LI TREATMENT OF ELECTRIC LAMPS (1) A generator of universal waste may treat waste lamps on-site by crushing or intentional breaking, if:

(a) the crushing or breaking is conducted in the final accumulation container;

(b) the operation and maintenance of the crushing or breaking unit are performed in accordance with written procedures developed by the manufacturer of the equipment;

(c) the manufacturer's operating and maintenance instructions are available for inspection by the department;

(d) an operation and maintenance log book, or similar documentation, is maintained and available for inspection by the department; and

(e) all crushing, breaking, handling, and storage of treated lamps complies with the mercury limits specified in 29 CFR 1910.1000.

AUTH: 75-10-405, MCA

IMP: 75-10-405, MCA

RULE LII ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF USED OIL (40 CFR 279) (1) The department hereby adopts and incorporates by reference 40 CFR 279, pertaining to standards for management of used oil.

AUTH: 75-10-405, MCA

IMP: 75-10-405, MCA

4. The rules proposed for repeal are as follows:

17.54.101 PURPOSE OF RULES (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5051, Administrative Rules of Montana. This rule would be replaced by RULE I, PURPOSE.

17.54.102 INCORPORATIONS BY REFERENCE (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5051, Administrative Rules of Montana. This rule would be replaced by RULE IV, INCORPORATION BY REFERENCE, and RULE VI, SUBSTITUTION OF STATE TERMS FOR FEDERAL TERMS.

17.54.105 SCOPE OF PERMIT REQUIREMENTS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5063, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.106 PERMITTING REQUIREMENTS: EXISTING AND NEW HWM FACILITIES (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5067, Administrative Rules of

Montana. This rule would be replaced by RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES; RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270); and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.107 TEMPORARY PERMITS (INTERIM STATUS) (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5071, Administrative Rules of Montana. This rule would be replaced by RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES; RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270); and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.108 APPLICATION FOR PERMIT (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5073, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.109 VALIDITY OF FEDERAL HWM PERMITS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5074, Administrative Rules of Montana. This rule would be replaced by RULE XLVIII, VALIDITY OF FEDERAL HAZARDOUS WASTE MANAGEMENT PERMITS.

17.54.110 SIGNATORIES TO PERMIT APPLICATIONS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5075, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.111 CONDITIONS OF PERMITS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5081, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.112 ESTABLISHING PERMIT CONDITIONS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5085, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.113 DURATION OF PERMITS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5086, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.118 SCHEDULES OF COMPLIANCE (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5095, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.119 REQUIREMENTS FOR RECORDING AND REPORTING (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5096, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.120 EFFECT OF A PERMIT (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5096, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.125 TRANSFER OF PERMITS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5105, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.126 MODIFICATION OR REVOCATION AND REISSUANCE (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5105, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270),

and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.127 TERMINATION OF PERMITS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5108, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.128 MINOR MODIFICATIONS OF PERMITS; TEMPORARY AUTHORIZATIONS FOR MODIFICATIONS; AND AUTHORIZATIONS FOR MANAGEMENT OF NEWLY IDENTIFIED WASTES (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5113, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.130 CONTENTS OF PART A OF THE PERMIT APPLICATION (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5125, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.131 CONTENTS OF PART B (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5126, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.132 PERMITS BY RULE (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5129, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.133 EMERGENCY PERMITS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5129, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.136 PERMITS FOR HAZARDOUS WASTE INCINERATORS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5135, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.137 PERMITS FOR LAND TREATMENT DEMONSTRATIONS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5143, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.138 FACILITY PERMIT FEES: APPLICATION, RENEWAL, MODIFICATION AND MAINTENANCE FEES (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5145, Administrative Rules of Montana. This rule would be replaced by RULE VIII, FACILITY PERMIT FEES: APPLICATION, RENEWAL, MODIFICATION AND MAINTENANCE FEES.

17.54.140 RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5153, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.145 PERMIT DENIAL (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5161, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.146 PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5161, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.150 RESTRICTIONS ON THE LAND DISPOSAL OF HAZARDOUS WASTES (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5171, Administrative Rules of Montana. This rule would be replaced by RULE XLIV, ADOPTION OF FEDERAL LAND DISPOSAL RESTRICTIONS (40 CFR 268), and RULE XLV, EXCEPTIONS



AND ADDITIONS TO ADOPTION OF FEDERAL LAND DISPOSAL RESTRICTIONS.

17.54.155 ADMINISTRATIVE PENALTY (AUTH: 75-10-405, MCA; IMP: 75-10-424, MCA), located at page 17-5175, Administrative Rules of Montana. This rule would be replaced by RULE III, ADMINISTRATIVE PENALTY.

17.54.201 DEFINITIONS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5201, Administrative Rules of Montana. This rule would be replaced by RULE XI, DEFINITIONS.

17.54.301 POLICY (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-403, 75-10-405, MCA), located at page 17-5251, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.302 DEFINITION OF WASTE (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5253, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.303 DEFINITION OF HAZARDOUS WASTE (AUTH: 75-10-405, MCA; IMP: 75-10-403, 75-10-405, MCA), located at page 17-5161, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.307 EXCLUSIONS (AUTH: 75-10-405, MCA; IMP: 75-10-403, 75-10-405, MCA), located at page 17-5265, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.308 SPECIAL REQUIREMENTS FOR COUNTING HAZARDOUS WASTES (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5282, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.309 REQUIREMENTS FOR RECYCLABLE MATERIALS; REQUIREMENTS FOR THE MANAGEMENT OF USED OIL (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5283, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261); RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE; RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266); RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES; and RULE LII, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF USED OIL (40 CFR 279).

17.54.310 RESIDUES OF HAZARDOUS WASTE IN EMPTY CONTAINERS (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5286, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.311 UNIVERSAL WASTE MANAGEMENT (AUTH: 75-10-405, MCA; IMP: 75-10-404, 75-10-405, MCA), located at page 17-5287, Administrative Rules of Montana. This rule would be replaced by RULE XLIX, ADOPTION OF FEDERAL UNIVERSAL WASTE RULE (40 CFR 273), and RULE L, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL UNIVERSAL WASTE RULE.

17.54.312 POLYCHLORINATED BIPHENYL (PCB) WASTES REGULATED UNDER FEDERAL LAW (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-403, 75-10-602, MCA), located at page 17-5291, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.315 CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5295, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.316 CRITERIA FOR LISTING HAZARDOUS WASTE (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5295, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION

AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.320 CHARACTERISTICS OF HAZARDOUS WASTE--GENERAL (AUTH: 75-10-204, 75-10-405, MCA; IMP: 75-10-203, 75-10-204, 75-10-403, 75-10-405, MCA), located at page 17-5301, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.321 CHARACTERISTIC OF IGNITABILITY (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5301, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.322 CHARACTERISTIC OF CORROSIVITY (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5302, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.323 CHARACTERISTIC OF REACTIVITY (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5302, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.324 TOXICITY CHARACTERISTIC (AUTH: 75-10-204, MCA; IMP: 75-10-203, 75-10-204, MCA), located at page 17-5303, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.325 RECLASSIFICATION TO A MATERIAL OTHER THAN A WASTE (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5307, Administrative Rules of Montana. This rule would be replaced by RULE XIX, ADOPTION OF FEDERAL PROCEDURES FOR VARIANCES FROM CLASSIFICATION AS A WASTE OR BOILER.

17.54.326 STANDARDS AND CRITERIA FOR RECLASSIFICATION TO A MATERIAL OTHER THAN A WASTE (AUTH: 75-10-404, 75-10-405,

MCA; IMP: 75-10-405, MCA), located at page 17-5307, Administrative Rules of Montana. This rule would be replaced by RULE XIX, ADOPTION OF FEDERAL PROCEDURES FOR VARIANCES FROM CLASSIFICATION AS A WASTE OR BOILER.

17.54.327 RECLASSIFICATION AS A BOILER (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5309, Administrative Rules of Montana. This rule would be replaced by RULE XIX, ADOPTION OF FEDERAL PROCEDURES FOR VARIANCES FROM CLASSIFICATION AS A WASTE OR BOILER.

17.54.328 PROCEDURES FOR RECLASSIFICATION (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5309, Administrative Rules of Montana. This rule would be replaced by RULE XIX, ADOPTION OF FEDERAL PROCEDURES FOR VARIANCES FROM CLASSIFICATION AS A WASTE OR BOILER.

17.54.330 LISTS OF HAZARDOUS WASTES--GENERAL (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5313, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.331 HAZARDOUS WASTE FROM NONSPECIFIC SOURCES (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5313, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.332 HAZARDOUS WASTE FROM SPECIFIC SOURCES (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5314, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.333 DISCARDED COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SPILL RESIDUES THEREOF (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5314, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.334 ADDITIONAL REGULATION OF CERTAIN HAZARDOUS WASTE RECYCLING ACTIVITIES ON A CASE-BY-CASE BASIS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5316,

Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.335 PROCEDURES FOR CASE-BY-CASE REGULATION OF HAZARDOUS WASTE RECYCLING ACTIVITIES (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5317, Administrative Rules of Montana. This rule would be replaced by RULE XIX, ADOPTION OF FEDERAL PROCEDURES FOR VARIANCES FROM CLASSIFICATION AS A WASTE OR BOILER.

17.54.350 DELETION OF CERTAIN HAZARDOUS WASTE CODES FOLLOWING EQUIPMENT CLEANING AND REPLACEMENT (AUTH: 75-10-405, MCA; IMP: 75-10-403, 75-10-405, MCA), located at page 17-5331, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.351 REPRESENTATIVE SAMPLING METHODS; TOXICITY CHARACTERISTIC LEACHING PROCEDURE; CHEMICAL ANALYSIS TEST METHODS; AND TESTING METHODS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5333, Administrative Rules of Montana. This rule would be replaced by RULE IV, INCORPORATION BY REFERENCE; RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261); and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.352 BASIS FOR LISTING--HAZARDOUS CONSTITUENTS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5335, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.353 COMPARABLE/SYNGAS FUEL EXCLUSION (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5336, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261), and RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

17.54.401 GENERAL PROVISIONS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5401, Administrative Rules of Montana. This rule would be replaced by RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262), and RULE XXIV, EXCEPTIONS AND

ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.402 HAZARDOUS WASTE DETERMINATION; APPLICABILITY OF RULES TO GENERATOR CATEGORIES; SPECIAL REQUIREMENTS FOR CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS (AUTH: 75-10-204, 75-10-405, MCA; IMP: 75-10-204, 75-10-405, MCA), located at page 17-5402, Administrative Rules of Montana. This rule would be replaced by RULE XXI, ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261); RULE XXII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE; RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262); and RULE XXIV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.403 REGISTRATION AND EPA IDENTIFICATION NUMBERS (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5407, Administrative Rules of Montana. This rule would be replaced by RULE VII, REGISTRATION AND EPA IDENTIFICATION NUMBERS FOR GENERATORS AND TRANSPORTERS.

17.54.404 MAINTENANCE OF REGISTRATION AND REGISTRATION FEES (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5407, Administrative Rules of Montana. This rule would be replaced by RULE IX, REGISTRATION FEES: FEE EXEMPTION, FEE ASSESSMENT, AND MAINTAINENCE OF REGISTRATION.

17.54.408 MANIFEST GENERAL REQUIREMENTS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5415, Administrative Rules of Montana. This rule would be replaced by RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262), and RULE XXIV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.409 ACQUISITION OF MANIFEST FORMS (AUTH: 75-10-204, 75-10-404, MCA; IMP: 75-10-204, 75-10-225, 75-10-405, MCA), located at page 17-5416, Administrative Rules of Montana. This rule would be replaced by RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262), and RULE XXIV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.410 MANIFEST COPIES (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-225, MCA), located at page 17-5416, Administrative Rules of Montana. This rule would be replaced by RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262), and RULE XXIV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.411 USE OF MANIFEST (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5416, Administrative Rules of Montana. This rule would be replaced by RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262), and RULE XXIV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.415 PACKAGING (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5421, Administrative Rules of Montana. This rule would be replaced by RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262), and RULE XXIV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.416 LABELING (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5421, Administrative Rules of Montana. This rule would be replaced by RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262), and RULE XXIV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.417 MARKING (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5422, Administrative Rules of Montana. This rule would be replaced by RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262), and RULE XXIV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.418 PLACARDING (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5423, Administrative Rules of Montana. This rule would be replaced by RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262), and RULE XXIV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.421 REQUIREMENTS FOR ACCUMULATION OF WASTES AND ACCUMULATION IN SATELLITE LOCATIONS (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5431, Administrative Rules of Montana. This rule would be replaced by RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262), and RULE XXIV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.425 RECORDKEEPING (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5441, Administrative Rules of Montana. This rule would be replaced by RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262), and RULE XXIV,

EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.426 ANNUAL REPORTING (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5441, Administrative Rules of Montana. This rule would be replaced by RULE XXV, ANNUAL REPORT FROM GENERATORS WHO SHIP HAZARDOUS WASTE OFF-SITE.

17.54.427 EXCEPTION REPORTING (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-225, MCA), located at page 17-5442, Administrative Rules of Montana. This rule would be replaced by RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262), and RULE XXIV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.435 INTERNATIONAL SHIPMENTS (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5453, Administrative Rules of Montana. This rule would be replaced by RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262), and RULE XXIV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.440 FARMERS (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-225, MCA), located at page 17-5461, Administrative Rules of Montana. This rule would be replaced by RULE XXIII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE (40 CFR 262), and RULE XXIV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

17.54.501 GENERAL PROVISIONS (AUTH: 75-10-204, 75-10-405, MCA; IMP: 75-10-204, 75-10-212, 75-10-214, 75-10-221, 75-10-225, 75-10-405, MCA), located at page 17-5501, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.502 EPA IDENTIFICATION NUMBER (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-212, 75-10-214, 75-10-221, 75-10-225, 75-10-405, MCA), located at page 17-5501, Administrative Rules of Montana. This rule would be replaced by RULE VII, REGISTRATION AND EPA IDENTIFICATION NUMBERS FOR GENERATORS AND TRANSPORTERS.

17.54.503 TRANSPORTER REGISTRATION (AUTH: 75-10-204, 75-10-405, MCA; IMP: 75-10-204, MCA), located at page 17-5502, Administrative Rules of Montana. This rule would be replaced by RULE XXIX, TRANSPORTER REGISTRATION.



17.54.504 APPLICABILITY OF FACILITY REQUIREMENTS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5502, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.505 MANIFEST SYSTEM (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5503, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.506 COMPLIANCE WITH MANIFEST (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5506, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.508 RECORDKEEPING (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5509, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.511 HAZARDOUS WASTE DISCHARGES--IMMEDIATE ACTION (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5513, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.512 DISCHARGE CLEAN UP (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-212, 75-10-214, 75-10-225, MCA), located at page 17-5514, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.524 TRAINING OF TRANSFER FACILITY PERSONNEL (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5525, Administrative Rules of Montana. This rule would be replaced by RULE XXX, TRAINING OF TRANSFER FACILITY PERSONNEL.

17.54.525 TRANSFER FACILITY SECURITY REQUIREMENTS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5525, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.526 EMERGENCY PREPAREDNESS, PREVENTION, AND RESPONSE AT TRANSFER FACILITIES (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5526, Administrative Rules of Montana. This rule would be replaced by RULE XXXI, EMERGENCY PREPAREDNESS, PREVENTION, AND RESPONSE AT TRANSFER FACILITIES.

17.54.527 TRANSFER FACILITY CONTAINER HANDLING REQUIREMENTS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5527, Administrative Rules of Montana. This rule would be replaced by RULE XXXII, TRANSFER FACILITY CONTAINER HANDLING REQUIREMENTS.

17.54.528 COMMERCIAL TRANSFER FACILITY ANNUAL REPORT (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5528, Administrative Rules of Montana. This rule would be replaced by RULE XXXIII, COMMERCIAL TRANSFER FACILITY REQUIREMENTS.

17.54.601 PURPOSE; APPLICABILITY (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5551, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.602 PROHIBITIONS (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5551, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.603 RESTRICTIONS ON CERTAIN HAZARDOUS WASTES (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5552, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.605 TEMPORARY PERMITS (INTERIM STATUS) (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5555, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.606 TEMPORARY PERMIT (INTERIM STATUS)--EXPIRATION--TERMINATION (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5555, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.607 TEMPORARY PERMIT (INTERIM STATUS)--TERMS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5556, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.609 STANDARDS FOR EXISTING FACILITIES WITH TEMPORARY PERMITS (INTERIM STATUS) (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5559, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.610 CHANGES DURING TEMPORARY PERMITTING (INTERIM STATUS) (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5560, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.612 EXCLUSIONS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5565, Administrative Rules of Montana. This rule would be replaced by RULE XXVII, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE (40 CFR 263), and RULE XXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

17.54.613 ANNUAL REPORT (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5568, Administrative Rules of Montana. This rule would be replaced by RULE XXXIX, ANNUAL REPORT.

17.54.701 PURPOSE (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5601, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264), and RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

17.54.702 STANDARDS AND REQUIREMENTS FOR PERMITTED FACILITIES (AUTH: 75-10-405, 75-10-406, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5602, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264), and RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

17.54.705 ANNUAL REPORT (AUTH: 75-10-204, 75-10-405, MCA; IMP: 75-10-204, MCA), located at page 17-5607, Administrative Rules of Montana. This rule would be replaced by RULE XXXVI, ANNUAL REPORT FROM FACILITIES.

17.54.801 PURPOSE (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5651, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.802 APPLICABILITY OF FINANCIAL REQUIREMENTS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5651, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS

WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.803 DEFINITIONS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5652, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.807 COST ESTIMATE FOR FACILITY CLOSURE (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5657, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.808 COST ESTIMATE FOR POST-CLOSURE CARE (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5659, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.809 CLOSURE AND/OR POST-CLOSURE TRUST FUND (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5663, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.810 SURETY BOND GUARANTEEING PAYMENT INTO A CLOSURE AND/OR POST-CLOSURE TRUST FUND (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5667, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.811 SURETY BOND GUARANTEEING PERFORMANCE OF CLOSURE AND/OR POST-CLOSURE (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5671, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264), and RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

17.54.812 CLOSURE AND/OR POST-CLOSURE LETTER OF CREDIT (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5673, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND

ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.813 CLOSURE AND/OR POST-CLOSURE INSURANCE (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5675, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.814 FINANCIAL TEST AND CORPORATE GUARANTEE FOR CLOSURE AND/OR POST-CLOSURE (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5677, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.817 USE OF MULTIPLE FINANCIAL MECHANISMS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5681, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.818 USE OF A FINANCIAL MECHANISM FOR MULTIPLE FACILITIES (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5681, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL

STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.820 RELEASE OF OWNER OR OPERATOR (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5685, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.821 USE OF A MECHANISM FOR FINANCIAL ASSURANCE OF BOTH CLOSURE AND POST-CLOSURE CARE (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5685, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.822 INCAPACITY OF OWNERS OR OPERATORS, GUARANTORS, OR FINANCIAL INSTITUTIONS (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5686, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE



TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.823 FINANCIAL ASSURANCE FOR LIABILITY COVERAGE (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5686, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.824 REQUIREMENTS FOR LIABILITY COVERAGE: SUDDEN OCCURRENCES (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5687, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.825 REQUIREMENTS FOR LIABILITY COVERAGE: NON-SUDDEN ACCIDENTAL OCCURRENCES (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5689, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.830 REQUEST FOR VARIANCE (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5695, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.831 UPWARD ADJUSTMENTS BY THE DEPARTMENT (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5695, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.832 PERIOD OF COVERAGE (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5696, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264); RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; RULE XXXVII, ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 265); and RULE XXXVIII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

17.54.833 WORDING OF THE INSTRUMENTS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5696, Administrative Rules of Montana. This rule would be replaced by RULE XXXIV, ADOPTION OF FEDERAL STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES (40 CFR 264), and RULE XXXV, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS

APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

17.54.901 PURPOSE OF RULES (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5725, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.902 MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF PERMITS (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5725, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.903 DRAFT PERMITS (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5726, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.905 FACT SHEET (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5729, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.907 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5731, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.908 PUBLIC COMMENTS AND REQUESTS FOR PUBLIC HEARINGS (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5734, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.909 PUBLIC HEARINGS (AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5734, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.910 OBLIGATION TO RAISE ISSUES AND PROVIDE INFORMATION DURING THE PUBLIC COMMENT PERIOD (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5735, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.911 REOPENING OF THE PUBLIC COMMENT PERIOD (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5735, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.912 RESPONSE TO COMMENTS (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5736, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.915 ISSUANCE AND EFFECTIVE DATE OF PERMITS (AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA), located at page 17-5739, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.1001 PURPOSE (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5771, Administrative Rules of Montana. This rule would be replaced by RULE X, PURPOSE OF SUBCHAPTER.

17.54.1002 DEFINITIONS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5771, Administrative Rules of Montana. This rule would be replaced by RULE XI, DEFINITIONS, and RULE XVII, DEFINITIONS.

17.54.1006 RECORDS AVAILABLE AUTOMATICALLY (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5775,

Administrative Rules of Montana. This rule would be replaced by RULE XII, RECORDS AVAILABLE AUTOMATICALLY.

17.54.1007 FORM OF REQUEST (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5775, Administrative Rules of Montana. This rule would be replaced by RULE XIII, FORM OF REQUEST.

17.54.1008 PRIVILEGED BUSINESS INFORMATION (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5775, Administrative Rules of Montana. This rule would be replaced by RULE XIV, PRIVILEGED BUSINESS INFORMATION.

17.54.1012 DEPARTMENT DECISION TO ANSWER REQUEST (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5779, Administrative Rules of Montana. This rule would be replaced by RULE XV, DEPARTMENT DECISION TO ANSWER REQUEST.

17.54.1013 APPEAL (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5780, Administrative Rules of Montana. This rule would be replaced by RULE XVI, APPEAL.

17.54.1017 FEES FOR SEARCHING AND COPYING (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5783, Administrative Rules of Montana. This rule would not be replaced in the proposed new rules.

17.54.1101 APPLICABILITY (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5801, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1102 MANAGEMENT PRIOR TO BURNING (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5806, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1105 PERMIT STANDARDS FOR BURNERS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5807, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266); RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE

MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES; RULE XLII, HAZARDOUS WASTES AND OTHER WASTES THAT MAY NOT BE BURNED IN A BOILER OR INDUSTRIAL FURNACE; and RULE XLIII, BACKGROUND AND PERIODIC TESTING OF SOILS, SURFACE WATERS AND AQUIFERS.

17.54.1106 STANDARDS TO CONTROL ORGANIC EMISSIONS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5825, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1107 STANDARDS TO CONTROL PARTICULATE MATTER (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5831, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1108 STANDARDS TO CONTROL METALS EMISSIONS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5831, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1109 STANDARDS TO CONTROL HYDROGEN CHLORIDE (HCL) AND CHLORINE GAS (CL<sub>2</sub>) EMISSIONS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5841, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1112 SMALL QUANTITY ON-SITE BURNER EXEMPTION (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5845, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS

FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1113 STANDARDS FOR DIRECT TRANSFER (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5846, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1114 REGULATION OF RESIDUES (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5849, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1118 INCORPORATION BY REFERENCE (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5855, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1119 INTERIM STATUS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5855, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1201 REMEDIAL ACTION PLANS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5857, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.1202 APPLYING FOR A RAP (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5859, Administrative Rules of Montana. This rule would be replaced by RULE XLVI,

ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.1205 GETTING A RAP APPROVED (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5865, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.1206 MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF RAPs (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5869, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.1210 OPERATING UNDER THE RAP (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5875, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.1211 OBTAINING A RAP FOR AN OFF-SITE LOCATION (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5876, Administrative Rules of Montana. This rule would be replaced by RULE XLVI, ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270), and RULE XLVII, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM.

17.54.1301 GENERAL INFORMATION (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5881, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1302 DEFINITIONS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5881, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND



ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1303 MILITARY MUNITION WASTE (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5882, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1311 STANDARDS APPLICABLE TO THE TRANSPORTATION OF WASTE MILITARY MUNITIONS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5891, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1312 STANDARDS APPLICABLE TO EMERGENCY RESPONSES (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5892, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

17.54.1313 STANDARDS APPLICABLE TO THE STORAGE OF WASTE MILITARY MUNITIONS (AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA), located at page 17-5893, Administrative Rules of Montana. This rule would be replaced by RULE XL, ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES (40 CFR 266), and RULE XLI, EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

5. The Department is proposing this adoption and repeal of rules to maintain delegation of authority from the U.S. Environmental Protection Agency (EPA) to enforce the hazardous waste management requirements of the federal Resource Conservation and Recovery Act of 1976 (RCRA) by incorporating recent amendments to RCRA regulations. It has been the policy of the Montana legislature for Montana state environmental protection agencies to retain primacy over implementation of

environmental protection programs. Incorporation of recent RCRA regulation amendments is necessary for Montana to maintain primacy over the RCRA program.

The Department is not proposing any new rule requirements that would make the state rules more, or less, stringent than RCRA regulations. Section 75-10-402(2), MCA, of the Montana Hazardous Waste Act ("the Act") states that one of the purposes of the Act is to "authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended." Section 75-10-405(2), MCA, states that, with certain limited exceptions, the department "may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended . . . ." 42 U.S.C. § 6926 of RCRA provides that authorized state hazardous waste programs must be equivalent to, and may not be less stringent than, RCRA. Therefore, the Department is required to maintain equivalency with federal RCRA regulations, except for certain state rules specified in § 75-10-405(2), MCA, that may be more restrictive than their federal counterparts.

As authorized by § 75-10-405(2), MCA, certain existing state rules are more restrictive than RCRA regulations. The Department is proposing to maintain these requirements in the new rules.

Some other existing state rules merely repeat the requirements of RCRA regulations. The Department is proposing to replace those state rules with new rules that would adopt and incorporate by reference the comparable RCRA regulations, rather than restating the language of the RCRA regulations. The Department is also proposing new rules that would adopt and incorporate by reference amendments to RCRA regulations that have not yet been incorporated into the state rules. This would ensure equivalency between those state rules and the comparable RCRA regulations and make it much easier for the Department to maintain equivalency by regularly updating the incorporations by reference to adopt the most recent version of the RCRA regulations. Adopting and incorporating by reference comparable RCRA regulations would also make compliance easier because regulated entities would not need to try to determine whether there are differences between those RCRA regulations and the comparable state rules.

The Department is proposing substituted language for some of the terms and other language in some of the federal regulations the Department is proposing to adopt and incorporate by reference. The Department is also proposing to add language to some of these federal regulations and to except some of the provisions of the federal regulations from the adoption and incorporation by reference. These revisions to the federal regulations are necessary to adapt the federal regulations to the existing state rules and to implementation by the Department rather than EPA.

The Department is proposing in the new rules not to include the text of the last sentence of the current ARM 17.54.1013(4), which states that the district court's review of an appeal concerning a public document request is a de novo review. This deletion is necessary to avoid exceeding the Department's rulemaking authority and to avoid a possible conflict with legal requirements concerning judicial review.

In the new rules, the Department is proposing not to include the provisions of ARM 17.54.1017, which requires the Department in general to charge \$.20 per page for copying public records concerning hazardous waste management facilities and sites. With repeal of ARM 17.54.1017, the Department would follow its general policy concerning copy fees under which the Department charges reasonable fees when appropriate and necessary. Under this policy the Department would not necessarily charge a fee for every copying request.

The Department is proposing to combine certain existing state rules in the proposed new rules and is proposing to separate the provisions of certain other existing rules. This is intended to place similar subjects together that are now located in separate rules, making the rules easier to read, understand and follow.

Some of the proposed new rules reflect minor editorial revisions from the existing state rules that are not intended to change the meaning of the existing requirements. These revisions are intended to clarify the rules, make the rules more concise and conform the rules to current rule drafting style.

Under Section 2-4-302(1), MCA, if an agency proposes to adopt, increase or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice of rulemaking must include an estimate, if known, of the cumulative amount for all persons of the proposed increase, decrease, or new amount, and the number of persons affected. All of the fees in the new rules are existing fees and fee amounts, so 2-4-302(1), MCA, does not apply to those fees. Repeal of ARM 17.54.1017 would decrease a fee by repealing the required fee for copying public records concerning hazardous waste management facilities and sites. The number of persons affected by, and cumulative effect of, elimination of the fee is unknown, however, the Department receives very few requests to copy such records.

6. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to Mary Mackie, Paralegal, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901, no later than November 24, 2000. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Mark Steger Smith at "mssmith@state.mt.us", no later than 5 p.m. November 24, 2000.

7. Mark Steger Smith, attorney for the Department, has been designated to preside over and conduct the hearing.

8. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request 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 Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901, faxed to the office at (406) 444-4386, or may be made by completing a request form at any rules hearing held by the Department.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Reviewed by:

David Rusoff  
David Rusoff, Rule Reviewer

Certified to the Secretary of State October 16, 2000.

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

In the matter of the proposed ) NOTICE OF PROPOSED  
amendment of ARM 18.3.101 ) AMENDMENT  
through 18.3.106 and 18.3.201 )  
concerning debarment of ) NO PUBLIC HEARING  
contractors due to violations of ) CONTEMPLATED  
department requirements and )  
determination of contractor )  
responsibility )

TO: All Concerned Persons

1. On November 25, 2000, the Montana Transportation Commission and the Montana Department of Transportation propose to amend ARM 18.3.101 through 18.3.106 and 18.3.201 which relate to the debarment of contractors due to violations of department requirements and determination of contractor responsibility.

2. The Commission and Department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5 p.m. on November 10, 2000, to advise us of the nature of the accommodation you need. Please contact Timothy W. Reardon, Legal Services, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, telephone (406) 444-6302 or TTY users can call (406)444-7696, fax (406) 444-7206, e-mail treardon@state.mt.us.

3. Each of the proposed changes is reasonably necessary for the reasons given below. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

18.3.101 PURPOSE

(1) and (2) remain the same.

(3) If a person commits an act, as defined in these rules, indicating that the person no longer merits the privilege of contracting with the department or participating in department projects, the department may begin proceedings under these rules to debar the person from bidding on or otherwise participating in department contracts or projects. A person's decision to bid upon or accept contracts with the department, or otherwise participate in department contracts, is a voluntary acceptance of the provisions of these rules and their requirements.

(4) Disputes under this process, while they are contested and part of the adversarial process of these rules and subject to their safeguards, are not a "contested case" under the Montana Administrative Procedure Act, in accordance with 2-4-102, MCA.

(5) remains the same.

AUTH: 60-2-201 and 60-3-101, MCA

IMP: 18-1-102, 18-2-313, 18-4-301, 60-2-111, 60-2-112,  
and 60-2-201, MCA

REASON: The proposed change is necessary to clearly reflect that subcontractors and suppliers on Department contracts are bound by the rules to the same extent as prime contractors. The proposed addition to (4) makes clear that such disputes are still subject to the procedural safeguards of the rules, whether they are a "contested case" or not.

18.3.102 DEFINITIONS

(1) through (8) remain the same.

(9) "Participating" in a department project means a person performing any work in any capacity (e.g., prime contractor, subcontractor, sub-subcontractor, clearing rights-of-way for utilities, designer, consultant, etc.), or providing any equipment, labor, services, or materials to be used in the project.

(9) and (10) remain the same but will be renumbered (10) and (11).

~~(11)~~ (12) "Suspension" is an immediate and a temporary exclusion of a person from bidding on or participating in contracts, work or projects during the period pending completion of any investigation into, and the initiation and completion of, possible debarment proceedings as may ensue. It is a discretionary administrative decision by the director, and is not appealable only to the commission or elsewhere under the procedures stated in ARM 18.3.106.

AUTH: 60-2-201 and 60-3-101, MCA

IMP: 60-2-111, 60-2-112, and 60-2-201, MCA

REASON: The suspension process is more appropriately explained in ARM 18.3.106. The proposed change to "participating" makes it more clear that even initial work on a Department project, before the actual construction contract is awarded, is also impacted by a debarment or suspension.

18.3.103 SCOPE

(1) and (2) remain the same.

(3) Debarment is distinct from a commission finding of nonresponsibility. The commission has the authority and ability in its discretion to find a person nonresponsible for purposes of disallowing a bid on a project or contract, or prohibiting a person from otherwise participating in a project or contract (e.g., as a subcontractor, supplier, etc.) without conducting debarment proceedings.

(4) and (5) remain the same.

(6) If a person is debarred by any agency of the federal government for any period, the department may debar it for a period up to that set by the federal government without need for further debarment proceedings. The only evidence required in a

debarment hearing in a case based on an existing debarment will be a certified copy of an order, agency letter or other final action declaring the debarment in the other jurisdiction. That will not prevent the person from presenting evidence to dispute the proposed debarment or its length. If the person is debarred by a branch or agency other than of the Montana or federal government (i.e., another state, a county, etc.), or if the department may wish a debarment period exceeding that set by the other Montana agency or the federal government, the department must hold full debarment proceedings before increasing the debarment period.

(7) remains the same.

AUTH: 60-2-201 and 60-3-301, MCA

IMP: 60-2-111 and 60-2-112, MCA

REASON: The proposed change is necessary to clearly reflect that subcontractors and suppliers on Department contracts are bound by the rules to the same extent as prime contractors.

18.3.104 REASONS FOR DEBARMENT

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

(ii) a history of failure to perform or of unsatisfactory performance in one or more public agreements or transactions. This includes, among other possible examples, a common or repeated practice of a contractor submitting low bid and later submitting claims which are determined to be unfounded or unreasonable (i.e., claiming for work or conditions which were called for in or should reasonably have been anticipated for the project), and a prime contractor's repeated failure to promptly pay its subcontractors and/or suppliers after the prime has been paid by the project owner;

(iii) and (iv) remain the same.

(v) serious or repeated violations of U.S. or Montana department of labor wage requirements.

(d) Knowingly violated Montana or federal disadvantaged business enterprise (DBE) programs. It includes violations of the department's DBE program (i.e., establishing or dealing with a known DBE "front"; dealing with a DBE which he knows is not performing a "commercially useful function"; or performing part of the DBE's required work; or not making prompt payment as required by law to DBE subcontractors or suppliers);

(e) through (2) remain the same.

AUTH: 60-2-201 and 60-3-101, MCA

IMP: 17-8-231, 18-1-102, 18-2-313, 60-2-111, 60-2-112, and 60-2-201, MCA

REASON: The proposed changes implement the changes required by the 1999 Montana Legislature's passage of Mont. Code Ann. § 28-2-2103 and the U.S. Department of Transportation's 1999 changes to its DBE Program, found at 49 CFR § 26.29, and provides the term for the DBE acronym.

18.3.105 PROCEDURES (1) If the department receives or learns of credible information that a person has engaged in

conduct which may warrant ~~suspension~~ or debarment, the department shall initiate and follow the following procedure.

(2) The administrator of the division concerned with the alleged conduct or contract will obtain any information that may be readily obtained on the alleged conduct. If the administrator, deputy director, or department's legal counsel initially determines that there exists credible evidence that the person has committed a violation set forth above, the administrator they shall notify the director in writing of the known information supporting that or rebutting such a determination.

(3) If the director, in his discretion, agrees that, from the information available, credible evidence exists that the person has committed a violation set forth above, the director shall mail, certified return receipt requested, a written notice to the person. The notice shall contain a statement of the pertinent facts, the alleged violations being considered, notice of the right to an administrative hearing, and that debarment is being considered. If debarment is proposed based on a debarment by another state or federal agency, a copy of that debarment or its notice letter will be attached.

(4) A person against which debarment is proposed shall be provided an opportunity for administrative hearing. A written request for hearing must be received by the department's chief counsel within 14 calendar days after the person's receipt of date of the mailing of the notice of the determination.

(a) Failure to timely submit a written request constitutes a waiver of the opportunity for administrative hearing and appeal, and a final debarment decision by default may then be entered by the director, which is not subject to appeal.

(b) Default orders will use the procedure stated in Model Rule 10, ARM 1.3.214.

(5) through (11)(e)(iii) remain the same.

(iv) (f) The hearing may be continued with recesses as determined by the hearing examiner.

(f) (g) Evidence introduced at the hearing may be received in written form or oral testimony given under oath or affirmation. Parties have a right to cross-examine all persons testifying at a hearing.

(i) The hearing examiner may consider hearsay evidence for the purpose of supplementing or explaining other evidence. A decision should not ordinarily be based wholly upon hearsay evidence, however, circumstances in some cases may require it (i.e., debarment based on a prior debarment in another jurisdiction), at the discretion of the hearing examiner.

(ii) Judicially noticed facts are not hearsay.

(iii) Fraudulent, criminal or other seriously improper conduct of any individual (officer, director, shareholder, partner, employee, or other individual associated with a person) may be imputed to the person when the conduct occurred in connection with the individual's performance of duties for or on behalf of the person, or with the person's knowledge, approval, or acquiescence. The person's acceptance of the benefits



derived from the conduct will be evidence of such knowledge, approval or acquiescence.

(iv) The department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

(v) Exhibits shall be marked and the markings shall identify the party offering the exhibit. Exhibits shall be preserved by the department as part of the administrative record.

(g)(h) Objections to offers of evidence must be made at the time of the offer and shall be noted in the administrative record. A hearing examiner may rule on evidentiary objections at the time of the hearing, after receipt of oral or written argument by the parties, or at the time of entry of the proposed decision.

(h)(i) The person must present all potential and available grounds to contest the debarment, and failure to raise an issue before the hearing examiner will waive that issue's consideration on any appeal or potential judicial review.

(i)(j) The department's burden of proof for the hearing will be a preponderance of the admissible evidence presented. That is proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(j)(k) After the hearing and any required post-hearing briefs and submissions, the hearing examiner shall enter a proposed decision, which shall be served on all parties by certified mail, return receipt requested, to their designated agent. The proposed decision shall contain findings of fact and conclusions of law supported by the administrative record, and recommend a proposed action to the director.

(12) remains the same.

(13) The sole method of appeal of the director's decision is as follows:

(a) The director's decision is final unless appeal is made to the commission. An appeal may only be made if it is submitted to the director in writing, and only if received by the director's office no later than 10 calendar days after date of delivery mailing of the final decision to the designated agent of the appealing party. If delivery of the final decision is refused or for any other reason not able to be delivered to the designated agent (i.e., returned as undeliverable, addressee moved and left no forwarding address, etc.), the decision will be final and the ten 10-day appeal period will begin to toll on the date the certified letter is returned to the director's office.

(b) ~~The sole appeal~~ of the director's decision is to the commission. ~~It, which~~ shall review the administrative record of the proceedings and its findings and conclusions only. The commission will determine whether or not the findings and conclusions are supported by that record. The commission may affirm, reject or modify the director's decision. If the commission determines that the record does not support the

findings and conclusions, it may refer the matter back to the director for any action the commission deems appropriate and directs.

(c) through (16) remain the same.

AUTH: 60-2-201 and 60-3-101, MCA

IMP: 60-2-111, 60-2-112, and 60-3-101, MCA

REASON: The proposed changes largely make style revisions, and make the applicable date the date of mailing, not the date of receipt, due to historic incidents of addressees refusing to pick up letters which were sent "return receipt requested."

18.3.106 SUSPENSION (1) Pending debarment proceedings or an investigation that ~~could~~, which initial information or indications indicate may lead to discovery of facts for which debarment proceedings may be initiated, the department may suspend a person from contracting with the department or participating in department projects. Suspension may be used when there exists evidence of any of the above debarment causes set forth in ARM 18.3.104, and immediate action is considered necessary or prudent to protect the department or the public contracting process or safety.

(2) The scope of a suspension is the same as the scope of a debarment (see ARM 18.3.103, above).

(3) Suspensions may last for a reasonable period pending the completion of an investigation and any debarment proceedings, but in no case more than six months. If legal or debarment proceedings are not initiated within six months after the date of the suspension notice, the suspension shall be terminated.

(4) ~~A~~ ssuspension will be imposed by written letter notice from the director, either at the director's discretion or on the written recommendation of the administrator of the an affected division or the department's legal counsel.

(5) The suspended person will be immediately provided a copy of the director's letter imposing its suspension, the reasons therefor, that the suspension is temporary pending investigation of the reasons stated, and the suspension's effect, and the procedures available to the person under (6), below.

(6) In the absence of a department determination that public safety could be jeopardized if the suspension is not immediately imposed, the suspension will be effective five calendar days after the date of notice. Before the effective date of the suspension or within five calendar days thereafter, the suspended person may request a hearing to contest the suspension. If a hearing is timely requested, the director shall appoint a hearing officer, who will schedule a hearing. The hearing will be held not more than 10 calendar days after the request for hearing is received by the director. The hearing officer shall set a date, time, and place for the hearing, at which the department will present its reasons for seeking suspension of the person. The person shall be given the

opportunity to respond to the department's reasons. Within five working days after the hearing, the hearings officer shall submit to the director:

(a) findings and conclusions as to whether or not a suspension is warranted; and

(b) a proposed order for the director's consideration;

(c) The director will issue the department's decision on the issues raised by the person within five workdays of receipt of the findings, conclusions, and proposed order.

(7) However, no opportunity to contest the suspension will be provided if:

(a) the suspension is based upon the filing of a felony information or indictment, or conviction or civil judgment, involving actions applicable under ARM 18.3.104; or

(b) a determination is made in writing by the director, based on the advice of department's legal counsel, that the substantial interests of the state in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by the above (e.g., interfering with a state or federal criminal investigation, having to identify a confidential informant, etc.).

(8) If the person wishes to appeal the director's decision, the sole appeal will be to the Montana transportation commission, which will review the written record of the appeal either at a regular or special meeting, consistent with the commission's policies for public notice of meetings. The commission will not receive new evidence, but will only review the documentation that was available to the director, together with the transcript of the person's appearance before the director. The commission may, upon majority vote of its members, hear oral argument on the issues involved. The commission will issue its written decision within 10 working days of its meeting.

(9) The decision of the commission will be final. It is a discretionary decision made in the commission's status as a quasi-judicial board.

(6)(10) The time of suspension may, but need not, be included in any eventual period of debarment, at the discretion of the director or commission.

AUTH: 60-2-201 and 60-3-101, MCA

IMP: 60-2-111, 60-2-112, and 60-3-101, MCA

REASON: The proposed changes are made in order to increase the amount of "procedural due process" before the time of suspension in the suspension process.

18.3.201 STANDARDS OF RESPONSIBILITY (1) Among factors that may be considered in determining whether the standard of responsibility has been met are whether a prospective contractor (however that person will be participating in a department project):

(a) has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or

the reasonable ability to obtain them, necessary to indicate the capability to meet all contractual requirements;

(b) has a satisfactory record of integrity (e.g., has not violated department requirements, such as the DBE program, has not filed false or inflated claims on contracts, has not improperly used dyed fuels on department projects, etc.) on any public works contracts;

(c) is qualified legally to contract with the commission;

(d) has not failed to supply any necessary information in connection with any inquiry concerning the responsibility; and,

(e) has a satisfactory record of past performance and contract compliance on any public works contracts.

(2) Nothing shall prevent the commission from establishing additional responsibility standards for a particular contract or all future contracts, provided that these additional standards are set forth in the contract documents (e.g., its specifications).

(3) and (4) remain the same.

(5) If a bidder who otherwise may have been awarded a contract is found nonresponsible, or if a person is otherwise found to be nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding must be prepared by the commission. The determination must be made part of the contract file and a copy of the determination mailed to the affected bidder. The determination may be for a stated period of time, although that is not necessary.

AUTH: 60-2-201 and 60-3-101, MCA

IMP: 60-2-111 and 60-2-112, MCA

**REASON:** The proposed changes are made to make the provisions more clear, such as by providing specific examples of violations of a record of integrity.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendments in writing to Timothy W. Reardon, Chief Counsel, Montana Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, or by facsimile to (406) 444-7206, or by e-mail to treardon@state.mt.us, to be received no later than 5:00 p.m. on November 23, 2000.

5. If persons who are directly affected by the proposed amendments 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 comments they have to Timothy W. Reardon, Chief Counsel, Montana Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, or by facsimile to (406) 444-7206, or by e-mail to treardon@state.mt.us, to be received no later than 5:00 p.m. on November 23, 2000.

6. If the Commission and Department receive requests for a public hearing on the proposed amendments from either 10% or

25, whichever is less, of the persons who are directly affected by the proposed amendments, 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 the persons directly affected has been determined to be 90, based on the 900 contractor firms listed on the Department's Contract Plans Section's "Invitation to Bid" list.

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

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

MONTANA DEPARTMENT OF TRANSPORTATION

By: /s/ Marvin Dye

MARVIN DYE, Director

MONTANA TRANSPORTATION COMMISSION

By: /s/ Thorm R. Forseth

THORM FORSETH, Chairman

/s/ Lyle Manley

LYLE MANLEY, Rule Reviewer

Certified to the Secretary of State October 13, 2000.

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of amendment	)	NOTICE OF PROPOSED
of ARM 32.2.401 as it relates	)	AMENDMENT AND ADOPTION
to fees charged to record,	)	
transfer, or rerecord new or	)	
existing brands or to provide	)	
certified copies of recorded	)	NO PUBLIC HEARING
brands and adoption of Rule I	)	CONTEMPLATED
as it relates to fees charged	)	
by the Montana Department of	)	
Livestock Veterinary	)	
Diagnostic Laboratory	)	

TO: All Concerned Persons

1. On November 27, 2000, the board of livestock proposes to amend ARM 32.2.401 as it relates to various fees charged by the department of livestock for recording and transferring brands, for providing certified copies of brands, and to adopt Rule I as it relates to fees charged for procedures provided by the Montana veterinary diagnostic laboratory.

2. The board of livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department of livestock no later than 5:00 p.m. on November 15, 2000, to advise us of the nature of the accommodation that you need. Please contact Darcy Anderson, 301 N. Roberts St. - Rm. 201, PO Box 202001, Helena, MT 59620-2001; phone: (406)444-3812; TTD number: 1-800-253-4091; fax: (406)444-1929; email to danderson@state.mt.us.

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

32.2.401 DEPARTMENT OF LIVESTOCK LICENSE FEES, PERMIT FEES, AND MISCELLANEOUS FEES (1) The department of livestock shall charge:

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

~~(2)~~ (b) for recording a new mark or brand, recording a mark or brand transfer, or recording a mark or brand as required by 81-3-107, MCA, a fee of ~~\$50~~\$100;

~~(3)~~ (c) for providing a certified copy of a brand or mark record and a duplicate certificate, a fee of ~~\$2.50~~\$5.00;

(4) through (15) remain the same, but are renumbered (d) through (o).

(15)(a) remains the same, but is renumbered (o)(i).

(16) through (38) remain the same, but are renumbered (p) through (al).

AUTH: 81-1-102, 81-3-107, and 37-1-134, MCA  
IMP: 81-3-107, MCA

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

RULE I DIAGNOSTIC LABORATORY FEES (1) The following list identifies the laboratory services and procedures available at the Montana department of livestock veterinary diagnostic laboratory (laboratory), and the fees charged for each of those services and/or procedures:

(a) abortion studies (kits):	
(i) includes histopathology and bacteriology (use SV43 form)	\$15.00
(b) bacteriology (use SV43 form):	
(i) aerobic culture	6.00
(ii) sensitivity per isolate	3.00
(iii) culture for Trichomonas and/or Campylobacter	4.00
(iv) direct microscopy	3.50
(v) enterotoxemia (referral)	40.00
(vi) Clostridium FA	12.00
(vii) dermatophyte culture and PAS stain	15.00
(viii) non-dermatophyte fungal culture	15.00
(ix) Chlamydia ELISA	16.00
(c) histology (use SV43 form):	
(i) single byopsy and/or cytology	15.00
(ii) 2-10 tissues	20.00
(iii) >10 tissues	25.00
(iv) duplicate H&E slide	5.00
(v) special stains	5.00
(vi) immunohistochemistry	15.00
(d) milk laboratory (use SV43 form):	
(i) added water	2.00
(ii) antibiotic (depending on class of suspected antibiotic)	8.00 to 16.00
(iii) Brucella ring test	1.00
(iv) coliform (milk and water)	2.00
(v) component testing	.50
(vi) Gerber	2.00
(vii) Majonnier	3.00
(viii) pesticide	(minimum) 10.00
(ix) phosphatase	3.00
(x) somatic cell count	.50
(xi) standard plate count	2.00
(xii) yeast or mold	2.00
(e) miscellaneous tests (use SV43):	
(i) bovine IgG	5.00
(ii) equine IgG	15.00
(iii) ocular nitrate	5.00
(iv) incineration (only for diagnostic cases, ashes not recovered) (included in necropsy fees in (1)(f))	
(v) insurance and legal cases: contact laboratory	
(vi) tests not listed: contact laboratory	

(f) necropsy includes gross examination, histopathology and routine bacterial isolation, as deemed necessary by the pathologist, and carcass disposal (use SV43 form):		
(i)	cattle and horses	
(A)	fetus	25.00
(B)	<150 lbs.	40.00
(C)	150-500 lbs.	50.00
(D)	>500 lbs.	70.00
(ii)	sheep and goats	
(A)	fetus	25.00
(B)	<20 lbs.	25.00
(C)	>20 lbs.	45.00
(iii)	pigs:	
(A)	fetus	20.00
(B)	<25 lbs.	25.00
(C)	25-250 lbs.	40.00
(D)	>250 lbs.	50.00
(iv)	dogs and cats	40.00
(v)	other species	(minimum) 20.00
(vi)	spinal cord removal (in addition to necropsy fees)	50.00
(g)	neonatal diarrhea studies (kits):	
(i)	includes histopathology and routine bacteriology with additional tests for K-99 E. coli, coronavirus, rotavirus, Cryptosporidium, and serum immunoglobulin as history and age of calf dictates, (use SV43 form)	35.00
(h)	individual tests (use SV43 form):	
(i)	bovine IgG	5.00
(ii)	coronavirus FA	5.00
(iii)	Cryptosporidium	3.50
(iv)	electron microscopy	17.00
(v)	K-99 E. coli ELISA	5.00
(vi)	rotavirus ELISA	12.00
(i)	parasitology (use SV43 form):	
(i)	adult parasite or arthropod identification (referral):	15.00
(ii)	ectoparasite (maceration flotation)	7.50
(iii)	fecal flotation	7.00
(iv)	Giardia ELISA	16.00
(v)	Dirofilaria immitis (heartworm) ELISA	12.00
(j)	rabies (use SV43 form):	
(i)	FA examination	no charge
(ii)	mouse inoculation (if deemed necessary by the pathologist)	no charge
(iii)	carcass disposal (when the entire carcass is submitted rather than the head or removed brain; does not apply to bats)	(minimum) 10.00
(k)	serology (large animal) (use SV2A or VS10-11 form):	
(i)	anaplasmosis card, CF	2.00
(ii)	Avian Influenza AGID	4.00
(iii)	Bluetongue AGID	4.00



(iv)	Bluetongue ELISA	7.00
(v)	Bovine Leukemia Virus AGID, ELISA	5.00
(vi)	Bovine Respiratory Syncytial Virus SN	4.00
(vii)	Bovine Virus Diarrhea SN	4.00
(viii)	Bovine Virus Diarrhea ELISA	5.00
(ix)	Brucella abortus STT, SPT, CF, card,	
RIV, BAPA		no charge
(x)	Brucella ovis ELISA, CF	2.00
(xi)	Equine Infectious Anemia AGID (Coggins)	6.00
(xii)	Equine Infectious Anemia ELISA	12.00
(xiii)	Epizootic Hemorrhagic Disease AGID	10.00
(xiv)	Infectious Bovine Rhinotracheitis SN	4.00
(xv)	Johne's (Paratuberculosis) CF, ELISA	5.00
(xvi)	Johne's (Paratuberculosis) AGID	10.00
(xvii)	Leptospirosis (8 routine serovars) MAT	5.00
(xviii)	Ovine Progressive Pneumonia/Caprine Arthritis Encephalitis AGID	4.00
(xix)	Parainfluenza-3 HA	4.00
(xx)	Pseudorabies SN, LA	4.00
(xxi)	Salmonella pullorum MAT	2.00
(xxii)	Vesicular stomatitis CF contact laboratory	
(xxiii)	Vesicular stomatitis SN (New Jersey or Indiana)	8.00
(l)	serology (small animals) (use SV43 form):	
(i)	Brucella canis Tube	10.00
(ii)	Feline Infectious Peritonitis ELISA	20.00
(iii)	Feline Leukemia ELISA	5.00
(iv)	Feline Leukemia/Feline Immunodeficiency Virus ELISA	15.00
(m)	toxicology:	
(i)	referral to outside contracted laboratory	
(n)	virology (use SV43 form):	
(i)	BVD, IBR, Leptospira, Equine Herpes FA	5.00
(ii)	BRSV ELISA	25.00
(iii)	Canine Parvovirus (fecal only) ELISA	15.00
(iv)	electron microscopy (where applicable)	17.00
(v)	virus isolation (IBR, BVD, PI-3, PRV, Equine Herpes)	15.00
(o)	clinical pathology (use Form SV43R) clinical profiles:	
(i)	small animal health screen (SA Chem Panel, CBC/Differential, UA)	22.00
(ii)	small animal clinical profile (SA Chem Panel, CBC/Differential)	18.00
(iii)	SA Pre-Anesthetic Profile (BUN, CRE, ALT, ALP, Glu, TP, CBC/Differential)	12.00
(iv)	Feline ADR Profile (SA Chem Panel, T4, CBC/Differential, FeLV, FIV, FIA)	32.00
(v)	large animal health screen (LA Chem Panel, CBC/Differential, Fibrinogen, UA)	22.00
(vi)	large animal clinical profile (LA Chem Panel, CBC/Differential, Fibrinogen)	18.00
(vii)	LA Pre-Anesthetic Profile (BUN, GGT, AST, CK, CBC/Differential, Fibrinogen)	10.00

(viii) Equine Fitness Profile (AST, GGT, Tbili, CK, TP, ALB, Glob, Ca, PO4, Na, K, Cl, TCO2, CBC/Differential, Fibrinogen)	15.00
(p) mini-profiles:	
(i) small animal Hepatic profile (ALT, AST, ALP, GGT, Tbili, Dbili, TP, ALB, Glob, Chol, BUN, GLU)	8.00
(ii) small animal Renal Profile (BUN, CRE, TP, ALB, Glob, Ca, PO4, Na, K, Cl, TCO2)	8.00
(iii) Exocrine Pancreatic Profile (BUN, Ca, TP, ALB, Glu, ALP, ALT, AST, Chol, Amylase)	8.00
(iv) canine Endocrine Profile (Ca, PO4, TP, ALB, ALP, ALT, AST, Chol, T4, Na, K, Cl, Glu)	12.00
(v) canine Thyroid Problem (Chol, T4)	6.00
(vi) large animal Hepatic Profile (GGT, AST, Tbili, TP, ALB)	5.00
(vii) large animal Renal Profile (BUN, CRE, TP, ALB, Ca, PO4, Na, K, Cl)	8.00
(viii) SA/LA Gastrointestinal Profile (TP, ALB, Na, K, Cl)	5.00
(ix) feline Thyroid Profile (ALP, ALT, AST, PO4, T4)	8.00
(x) Electrolytes (Na, K, Cl, TCO2)	5.00
(q) Biochemical Panels:	
(i) small animal Chem Panel	13.00
(ii) large animal Chem Panel	13.00
(iii) T4 add-on;	5.00
(r) urine evaluation:	
(i) urinalysis (chemical, specific gravity, sediment evaluation)	5.00
(ii) urinalysis with culture/sensitivity	15.00
(s) Individual Biochemical Tests, call ahead for prices:	
(t) Cytology:	
(i) solid tissue (FNA, imprint, or smear)	15.00
(ii) bone marrow analysis	15.00
(iii) fluid analysis (total cell count, TP, SG, Cytology)	17.00
(iv) fluid smear (cytology only)	15.00
(v) CSF analysis (SG, Microprotein, Cytospin cytology)	25.00
(vi) Cytology with Histology	15.00
(vii) Cytology with culture/sensitivity	20.00
(u) miscellaneous tests:	
(i) cross match	5.00
(ii) Bovine Immunoglobulin (IgG)	5.00
(iii) Equine Immunoglobulin (IgG)	15.00
(iv) Coagulation (PT, APTT, FBR, FDP)	30.00
(v) Coagulation tests each individual	10.00
(vi) others, call ahead for prices	
(v) Hematology:	
(i) small animal CBC (RBC, HCT, MCV, MCH, MCHC, Reticulocytes, WBC/Differential, TP, RDW, MPV, Hemotrophic parasite screen)	8.00
(ii) small animal CBC without Differential	5.00

(iii)	Reticulocyte count	2.00
(iv)	Feline Anemia Panel (SA, CBC, FeLV, FIV, FIA)	18.00
(v)	large animal CBC (RBC, HCT, MCV, MCH, MCHC, Reticulocyte count, RDW, MPV, WBC/Differential, TP, Fibrinogen):	8.00
(vi)	large animal CBC without differential	5.00
(vii)	Hemotropic Parasite Screen	2.00
(viii)	Fibrinogen	2.00
(w)	other test requested, call ahead for prices.	
(x)	minimum fee	5.00

AUTH: 81-1-102, 81-3-107, and 37-1-134, MCA

IMP: 81-3-107, MCA

5. ARM 32.2.401 is being amended to alert the public to changes in and additions to the fees that are currently charged by the department for a variety of services it provides.

(a) The fee for recording a new brand or re-recording or transferring a previously registered brand, as proposed in ARM 32.2.401(2), is being increased to reflect the increased costs associated with providing this service. During its January 2000 regular meeting, the board of livestock approved this fee increase based upon a formal review of these associated costs.

(b) The fee for providing certified copies or duplicate certificates of registered brands, as proposed in ARM 32.2.401(3), is being increased to reflect the increased costs associated with providing this service.

(c) The fees for veterinary tests and diagnostic procedures, as proposed in Rule I, are being added to the rule to comply with a recommendation by the legislative auditor that these assorted laboratory fees be made part of this rule - in addition to ARM 32.5.102, which advises interested persons that the veterinary laboratory makes laboratory services available to the public for service-specific fees.

6. Brands must be re-recorded with the department every 10 years, according to 81-3-104, MCA. During calendar year 1999, there were approximately 76,000 brand owners in Montana. It is assumed there will be the same number of brand owners during the 2001 re-record. During the 1991 re-record, 60% of all brand owners re-recorded their brands. The department estimates that 60% of the brand owners will re-record their brands in 2001. Additionally, the department estimates there will be approximately 800 new brands recorded or brands transferred in calendar year 2000. Based on the above, the following computations describe the estimated cumulative amount of the increase:

(a) FY 2000: 800 new brands/transfers x \$100 each =

\$80,000;

(b) FY 2001: 76,000 brand owners x .60 = 45,600 @ \$100 each = \$4,560,000

On this basis, the cumulative amount will be \$4,640,000 and 46,400 people may be affected.

81-1-102, MCA, requires that the department charge for the services it provides so as to only recover the cost of providing those services. This proposed fee increase complies with the above-referenced statute. Additionally, only 10% of the revenue obtained from this fee may be used each year for the next 10 years, when the next re-record occurs. (See 81-3-107(1), MCA). Thus, approximately \$464,000 will be available to the department to cover increased costs for each of the next 10 years.

7. In calendar year 1999, 705 duplicate or brand certificates were issued. The current cost of providing these documents is \$5 each. The department estimates that the demand for these services will either remain constant or increase, but is unlikely to decrease. Therefore, the department estimates that at least 705 people will be affected and the cumulative amount will be \$3,525.

81-1-102, MCA, requires that the department charge for the services it provides so as to only recover the cost of providing those services. This proposed fee increase complies with the above-referenced statute.

8. The fees proposed in Rule I for services provided by the veterinary laboratory are presently being utilized by the laboratory under the authority of ARM 32.5.101 through 32.5.104 and 81-1-102, MCA. Fiscal year 1999 experience shows that 26,712 accessions (requests for laboratory service(s)) were received and accommodated, producing a cumulative amount of \$425,555, as follows:

Total Laboratory Accessions (requests for service(s))	26,712
Total Fees Collected	\$425,555

ITEM	SECTION REQUESTS	PROCEDURES	FEE
Abortion Kits	189	1,701	*
Bacteriology	3,697	11,833	\$ 64,732
Clinical			
Pathology	5,364	160,968	\$ 77,819
Histology	4,520	28,178	\$ 90,400
Milk			
Nonregulatory	545	545	\$ 4,000
Misc	95	95	*
Necropsy	172	172	\$ 5,685
Neonatal			
Diarrhea Kits	145	1,885	*
Parasitology	727	727	\$ 7,148

Rabies	961	1,023	N.C.
Serology (LA)	12,022	57,400	\$128,844
Serology (SmA)	465	465	\$ 7,645
Toxicology	**	-	-
Virology	<u>914</u>	<u>914</u>	<u>\$ 7,900</u>
Totals			***
	29,816	267,143	\$394,173

\* Fees included in other sections.

\*\* Referred to outside laboratories with no fees charged by the laboratory other than those passed on from the outside laboratories including costs of shipping and handling.

\*\*\* The difference between total fees (\$425,555) and the section income (\$394,173) is attributable to referrals or to other specialized testing.

81-1-102, MCA, requires that the department charge for the services it provides so as to only recover the cost of providing those services. This proposed fee increase complies with the above-referenced statute.

9. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to Marc Bridges, 301 N. Roberts Street - Room 308A, PO Box 202001, Helena, MT 59620-2002, to be received no later than November 24, 2000.

10. If persons who are directly affected by the proposed actions wish to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The comments must be received no later than November 24, 2000.

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

12. The Montana department of livestock maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes

to receive notices regarding a particular subject or subjects, including fee changes by the department. Such written request may be mailed or delivered to Marc Bridges, 301 N. Roberts Street - Room 308A, PO Box 202001, Helena, MT 59620-2001.

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

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges  
Marc Bridges, Exec. Officer,  
Board of Livestock  
Department of Livestock

By: /s/ Bernard A. Jacobs  
Bernard A. Jacobs, Rule Reviewer  
Livestock Chief Legal Counsel

Certified to the Secretary of State October 16, 2000.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

In the matter of amendment	)	NOTICE OF PUBLIC HEARING
of ARM 32.24.301 regarding	)	ON PROPOSED ADOPTION
the pricing of producer milk;	)	AND AMENDMENT
and the adoption of new rules	)	
I and II, and the amendment	)	
of ARM 32.24.520 and ARM	)	
32.24.523 as they relate to	)	
utilization, procedures to	)	
purchase and marketing of	)	DOCKET NO. 2-00
surplus milk	)	

TO: All Concerned Persons

1. On November 20, 2000, a public hearing will be held in the Scott Hart Auditorium, 302 N. Roberts St., Helena, Montana, to consider a petition submitted by Jock O. Anderson, Esq. for Meadow Gold Dairies Inc. on the amendment of ARM 32.24.301 which relates to the pricing of producer milk; and the adoption of new rules I and II and the amendment of ARM 32.24.523 as they relate to utilization of surplus milk; and procedures to purchase and market surplus milk. On the board's own motion, it is proposed to amend ARM 32.24.520 as it relates to definitions for the utilization of surplus milk; and procedures to purchase and market surplus milk.

2. The board of milk control will make reasonable accommodations for persons who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the milk control bureau no later than 5:00 p.m. on November 15, 2000, to advise us of the nature of the accommodation that you need. Please contact Marlys Mattfeldt, Milk Control Bureau, 301 N. Roberts St. - Rm. 236, PO Box 202001, Helena, MT 59620-2001; phone: (406)444-2875; TTD number: 1-800-253-4091; fax:(406)444-1432.

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

32.24.301 PRICING RULES

(1) through (4) remain the same.

(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 according to 7 CFR 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 (11) remain the same.

AUTH: 81-23-302, MCA  
IMP: 81-23-302, MCA

32.24.520 DEFINITIONS The following definitions apply to ~~ARM 32.24.521, 32.24.522, and 32.24.523, RULE I and RULE II~~ unless the context otherwise requires:

(1) through (8) remain the same.

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

32.24.523 MARKETING OF SURPLUS MILK TO NON-POOL HANDLERS

(1) All surplus milk not directed to other pool handlers for use in ~~class I and II~~ Montana class I and II sales as required by this subchapter shall be marketed and sold in an economically advantageous manner and any gain or loss shall be exclusively shared by all Montana pool dairymen.

(a) The surplus milk purchased by Montana pool handlers for out-of-state use, but processed in Montana, shall be treated the same as sales to non-pool handlers such as to a cheese plant.

(2) through (5) remain the same.

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

4. The proposed new rules provide as follows:

RULE I REQUIRED UTILIZATION OF SURPLUS MILK

(1) Any pool handlers with surplus milk shall first make that milk available to other pool handlers under the terms and conditions provided in sub-chapter 5 before disposing of that surplus milk to any non-pool handler.

(2) Any pool handlers without raw milk sufficient to satisfy their Montana class I and II market needs shall first utilize surplus milk available from other pool handlers under the terms and conditions provided in sub-chapter 5 before purchasing milk from other sources.

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

RULE II PROCEDURES, PURCHASE PRICE AND TERMS

(1) The milk control bureau shall have full authority to direct the transfer of surplus milk as necessary to implement RULE I. Any pool handler shall be deemed in compliance with the requirements of RULE I if it calls for surplus milk or makes surplus milk available in the following manner:

(a) On Wednesday of the preceding week, a pool handler in need of milk may telephone or fax its milk needs for the coming week to a pool handler reasonably believed to have surplus milk and that pool handler shall fax its confirmation or rejection of the order back by Friday of that same week.

(b) Unless otherwise agreed, delivery to the purchasing



pool handler shall be the responsibility of the selling pool handler.

(c) The milk control bureau shall have the authority to issue alternative or additional procedures as necessary to implement this provision.

(2) The purchase price at which a pool handler must make surplus milk available and at which a pool handler must purchase surplus milk shall be as follows:

(a) The price per hundredweight of the raw Montana milk shall be the quota price as determined by the milk control bureau on a monthly basis as defined in ARM 32.24.511 which means the weighted average price for all quota milk testing 3.5% butterfat as computed for the month by the milk control bureau in accordance with the procedures specified in ARM 32.24.513.

(b) Since the monthly Montana blended quota price isn't known until the next month after the applicable sale has taken place, an estimated quota price will be used which will be the quota price for the previous month. Once the milk control bureau announces the official quota price for that month, the bureau will adjust the raw milk pricing computations from the previous month to reflect the proper quota price by either debiting or crediting the purchaser's accounts.

(c) No premiums, hauling, or handling fees will be charged to the purchasing pool handler.

(3) Pool handlers will use the following method and manner of payment between them for surplus milk purchases:

(a) A pool handler who purchases surplus milk agrees to pay in cash the purchase price for all milk delivered on a weekly basis. All milk purchased each weekly period shall be paid for in full on the Friday of the following week by depositing payment in the United States mail.

(b) The selling handler will fax invoices of the surplus milk sales to the milk control bureau based on weights and butterfat tests and those weights and butterfat tests will be deemed accurate unless contested by the purchaser.

(c) In turn, the milk control bureau will compile the invoices, apply the appropriate quota price, and fax a statement to both the purchasing and selling handler.

(d) The purchasing handler will then mail payment directly to the seller, with a copy of payment faxed to the milk control bureau, to be applied to the surplus milk billing statement prepared by the bureau.

(4) All surplus milk purchased and sold hereunder must, at the time of delivery, meet all applicable local, state, and federal laws and regulations and any tendered surplus milk which does not meet such standards may be rejected.

(5) The weight and butterfat tests shall be determined on the basis of producer ticket weights and tests. If the purchasing pool handler contests the reported weights it shall notify the milk control bureau, which shall reconcile any discrepancies.

(6) Nothing herein shall preclude pool handlers from voluntarily selling and purchasing surplus milk directly

between themselves under any terms and conditions on which they agree in writing provided the transaction serves the purpose of applying surplus milk to class I or II usage.

(7) No pool handler shall be obligated to make surplus milk available to any other pool handler who is then in default on payment for any previous purchases of surplus milk. Any pool handler who makes surplus milk available and who has not been paid for that milk because of default in payment by the purchasing pool handler shall retain a direct right of action against the defaulting pool handler for the monies owed together with interest at the rate of 1.5% per month plus attorney's fees and costs.

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

5. The reasons for the proposed amendments and adoption of new rules are as follows:

a. The petition requesting an amendment to ARM 32.24.301 follows a notice by the board of milk control of a temporary emergency amendment of ARM 32.24.301, effective August 14, 2000. That notice can be located at page 2310 of Issue No. 16 of the Montana Administrative Register. A standard rulemaking procedure is requested before the expiration of the 120 days allowed for a temporary emergency amendment to remain in force absent a hearing.

b. The proposed new rules I and II, and the amendment to ARM 32.24.523 implements a means to purchase surplus milk by Montana pool handlers for sale out-of-state, and to re-enact a requirement that a Montana pool handler purchase Montana raw milk for its sales in Montana.

c. Because of the petition submitted to adopt new rules I and II and the amendment to ARM 32.24.523, necessitates minor house-cleaning in ARM 32.24.520.

6. Concerned persons may present their data, views or arguments, orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Milk Control Bureau, 301 N. Roberts Street - Room 236, PO Box 202001, Helena, MT 59620-2001, to be received no later than November 24, 2000.

7. Norman C. Peterson, has been designated to preside over and conduct the hearing.

8. The milk control bureau maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to

receive notices regarding milk issues. Such written request may be mailed or delivered to the Milk Control Bureau, 301 N. Roberts Street - Room 236, PO Box 202001, Helena, MT 59620-2001.

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

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 October 16, 2000.

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of amendment	)	NOTICE OF PROPOSED
of ARM 32.5.101 through	)	AMENDMENT AND ADOPTION
32.5.104, and adoption of	)	
Rule I as they relate to	)	NO PUBLIC HEARING
laboratory services	)	CONTEMPLATED

TO: All Concerned Persons

1. On November 27, 2000, the board of livestock proposes to amend ARM 32.5.101 through 32.5.104 and adopt rule I as they relate to laboratory services.

2. The board of livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department of livestock no later than 5:00 p.m. on November 15, 2000, to advise us of the nature of the accommodation that you need. Please contact Ms. Jan Finn, 301 N. Roberts St. - Rm. 201, PO Box 202001, Helena, MT 59620-2001; phone: (406)444-2043; TTD number: 1-800-253-4091; fax: (406)444-1929; email to janf@state.mt.us.

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

32.5.101 DEFINITIONS ~~In this sub-chapter~~ The following definitions apply to this sub-chapter:

(1) "Livestock" means cattle, horses, mules, asses, sheep, llamas, alpacas, bison, swine, ostriches, rheas, emus, goats, mules, alternative livestock as defined in 87-4-406, MCA, and other animals for purposes of disease prevention, control, and eradication. ~~or poultry, regardless of age, sex, or breed;~~

(2) remains the same.

(3) "Laboratory" means the Montana department of livestock veterinary diagnostic laboratory facility ~~operated by the department of livestock at Bozeman.~~

(4) remains the same.

(5) "Procedure" means any form of laboratory testing including, but not limited to, the disciplines of pathology, bacteriology, clinical pathology, virology, serology, and milk analysis.

AUTH: 81-2-102, MCA

IMP: 81-2-102, MCA

32.5.102 LABORATORY PROCEDURES AND FEES

(1) Information concerning procedures able to be performed and fees for laboratory services may be obtained by writing the ~~diagnostic~~ laboratory at ~~post-office~~ PO Bbox

997, Bozeman, Mt MT, 59715, 59771-0997 or calling (406) 586-5952994-4885.

(2) Fees will be charged for procedures performed on livestock specimens which are requested in order to qualify the livestock for show, sale, shipment across state or international lines, artificial insemination purposes, or for procedures which are within the capability of the submitting veterinarian to perform in his/her own facilities.

(3) Fees will ~~not~~ be charged for procedures performed on livestock ~~for~~ specimens which are submitted because of known or suspected exposure to disease or to obtain laboratory data to aid in disease diagnosis of specific animals- , except when those procedures are necessitated by an imminent concern for public health, as determined by the state veterinarian or the administrator of the laboratory, or their respective designees. ~~Fees will not be charged for procedures performed on non-animal materials when such are submitted to aid in disease diagnosis involving specific livestock.~~

(4) Fees will be charged for procedures performed on non-animal materials when such are submitted to aid in disease diagnosis involving specific livestock, except when those procedures are necessitated by an imminent concern for public health, as determined by the state veterinarian or the administrator of the laboratory, or their respective designees.

~~(4)~~ (5) Fees will be charged for procedures performed on specimens from ~~nonlivestock~~ non-livestock animals except when ~~the specimen has been submitted because of a public health reason~~ those procedures are necessitated by an imminent concern for public health, as determined by the state veterinarian or the administrator of the laboratory, or their respective designees.

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

(7) Fees will not be charged for procedures performed on additional or supplemental specimens requested by the laboratory to confirm or verify procedure(s) results on a previously submitted specimen, or to establish baseline data for a procedure. However, fees will be charged for additional or supplemental specimens that are requested or required by the laboratory or state veterinarian to determine absence or presence of disease in a herd, or for other similar regulatory reasons.

AUTH: 81-2-102, MCA  
IMP: 81-2-102, MCA

32.5.103 SUBMISSION OF SPECIMENS (1) Specimens submitted for testing must be packaged and shipped in leak-proof containers in such a manner as will insure their arrival at the laboratory in a testworthy condition, and must be accompanied by department approved forms describing the procedures needed. Upon request the laboratory will provide instructions for proper shipment. An accession charge will be imposed on specimens unsuitable for testing due to the

negligence of the person submitting them.

(2) All specimens sent to the laboratory must have shipping costs or postage pre-paid. The laboratory will not accept "collect-on-delivery" shipments.

AUTH: 81-2-102, MCA  
IMP: 81-2-102, MCA

32.5.104 PAYMENT OF FEES (1) All Montana deputy state veterinarians submitting specimens which require a fee will be billed once a month by the department. Payment is to be remitted to: ~~d~~Department of ~~l~~Livestock, 301 N. Roberts St., PO Box 202001, Helena, MT, 59601 59620-2001 and will be past due if not mailed within 45 days after the bill is received. Past due accounts will be subject to a \$2.00 late charge per month.

(2) Remains the same.

(3) Failure to pay bills within 90 days after they have been received may result in either suspension of laboratory use privileges for fee basis procedures, institution of any/all collection activities allowed by law, or both.

AUTH: 81-2-102, MCA  
IMP: 81-2-102, MCA

4. The proposed rule provides as follows:

RULE I TEMPORARY FEES (1) From time to time, the laboratory may make other procedures available to veterinarians and others as it deems appropriate in light of its duties and responsibilities and those of the department. When it does so, it will also establish a temporary fee for such procedures based on costs and/or cost comparisons. Those temporary fees will become lawful and remain so until the next regular meeting of the board of livestock, at which time they must be reviewed and approved or adjusted by the board for inclusion among the fees listed in [Rule I in MAR Notice No. 32-3-149 in this issue].

AUTH: 81-2-102, MCA  
IMP: 81-2-102, MCA

5. The reasons for the proposed amendments and adoption of a rule is as follows:

a. ARM 32.5.101 is being amended so the rest of the rule may be more easily understood by the public. The definition of "livestock" is changed to include species of animals that were not a concern of the department when this rule was originally adopted, and to be consistent with the definition provided in 81-2-702(5), MCA. A definition for "procedure" is being added so subsequent sections of the rule will be more meaningful and easily understood.

b. ARM 32.5.102(1) is being amended to provide the

public with the correct zip code and phone number for the laboratory. Paragraph (2) is amended only for style or grammatical reasons.

c. ARM 32.5.102(3) is being amended because it is outdated and to establish public health concerns as a reason that fees will not be charged. This part of the rule was originally written when few procedures were performed by the laboratory other than those related to the state's efforts to eradicate brucellosis in cattle. No fees were charged for those procedures because the work was done wholly in the state's interest. Since then, however, brucellosis has been eradicated in Montana's cattle, but over the time that eradication was occurring, producers, veterinarians, and public health officials began and have continued to request other, more diverse services from the laboratory. As those services were provided in response to these diverse demands, fees were also developed and charged based entirely on the costs associated with providing the services. However, even though consumers of these various services were made aware of and have willingly paid the laboratory's fees since their inception, the applicable rule has never been amended to reflect these gradual changes. Thus, the proposed amendments to this rule merely describe practices and fees that have legitimately evolved at the laboratory over the past 20 years in a continuous attempt to serve both the general public and the state's livestock industry.

d. ARM 32.5.102(4) is a new paragraph developed from paragraph (3) for the sake of clarity.

e. ARM 32.5.102(5) is being amended to clearly establish public health concerns as a reason that fees will not be charged for procedures performed on specimens from non-livestock animals.

f. ARM 32.5.102(6) is being added to the rule for the sake of clarity and to advise users of laboratory services that only when the laboratory, for its own reason(s), requests additional or supplemental specimens to those already submitted for testing will no fees be charged for testing the additional or supplemental specimens.

g. ARM 32.5.103(2) is being added to the rule to advise those submitting specimens to the laboratory that shipping and postage costs must be prepaid. On very infrequent occasions the laboratory accepts COD shipments in the interest of providing the requested service(s) as soon as possible and in being able to perform the requested procedures while the shipped specimens are as fresh as possible. However, this practice is not cost effective and can no longer be maintained.

h. ARM 32.5.104(3) is being amended to inform the

public that the laboratory will use its legal options, as it deems appropriate, to collect unpaid fees for services that have been previously provided. Doing so will assist the laboratory in keeping its overall operating costs as low as possible.

i. RULE I is being adopted to establish a procedure whereby the laboratory can quickly make new and/or improved procedures available to its consumers, as those procedures are demanded or become scientifically advisable, without first having to publish an amendment to this rule and/or to Rule I in MAR Notice No. 32-3-149 in this issue.

j. Fees are presently being charged for diagnostic laboratory services under the general authority of ARM 32.5.102 and 81-1-102, MCA. Those fees are currently proposed for inclusion in Rule I by MAR Notice No. 32-3-149 in this issue. Fiscal year 1999 experience shows that 26,172 accessions (requests for laboratory service(s)) were received and accommodated, producing a cumulative amount of \$425,555.00 as follows:

Total Laboratory Accessions (requests for service(s)) 26,712  
Total Fees Collected: \$425,555

ITEM	SECTION	REQUESTS	PROCEDURES	FEE
Abortion Kits	189		1,701	*
Bacteriology	3,697		11,833	\$ 64,732
Clinical				
Pathology	5,364		160,968	\$ 77,819
Histology	4,520		28,178	\$ 90,400
Milk				
Nonregulatory	545		545	\$ 4,000
Misc	95		95	*
Necropsy	172		172	\$ 5,685
Neonatal				
Diarrhea Kits	145		1,885	*
Parasitology	727		727	\$ 7,148
Rabies	961		1,023	N.C.
Serology (LA)	12,022		57,400	\$128,844
Serology (SmA)	465		465	\$ 7,645
Toxicology	**		-	-
Virology	<u>914</u>		<u>914</u>	<u>\$ 7,900</u>
Totals				***
	29,816		267,143	\$394,173

\* Fees included in other sections.

\*\* Referred to outside laboratories with no fees charged by the laboratory other than those passed on from the outside laboratories including costs of shipping and handling.

\*\*\* The difference between total fees (\$425,555) and the section income (\$394,173) is attributable to referrals or to other specialized testing.



6. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to Marc Bridges, 301 N. Roberts Street - Room 308A, PO Box 202001, Helena, MT 59620-2001, to be received no later than November 24, 2000.

7. If persons who are directly affected by the proposed actions wish to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The comments must be received no later than November 24, 2000.

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

9. The Montana department of livestock maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding a particular subject or subjects, including fee changes by the department. Such written request may be mailed or delivered to Marc Bridges, 301 N. Roberts Street - Room 308A, PO Box 202001, Helena, MT 59620-2001.

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

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges  
Marc Bridges, Exec. Officer,  
Board of Livestock  
Department of Livestock

By: /s/ Bernard A. Jacobs  
Bernard A. Jacobs, Rule Reviewer  
Livestock Chief Legal Counsel

Certified to the Secretary of State October 16, 2000.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of rules I through XVII and	)	ON PROPOSED ADOPTION,
the amendment of ARM	)	AMENDMENT AND TRANSFER
37.86.105, 37.86.2206,	)	
37.86.2207, 37.86.2801,	)	
37.86.3001, 37.86.3005,	)	
37.86.3502, 37.86.3702,	)	
37.88.901, 37.88.905,	)	
37.88.906, 37.88.907,	)	
37.88.1106, 37.88.1116,	)	
46.20.103, 46.20.106,	)	
46.20.114, 46.20.117 and the	)	
transfer of Title 46, Chapter	)	
20 pertaining to Mental	)	
Health Services	)	

TO: All Interested Persons

1. On November 17, 2000, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, amendment and transfer of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing. If you need to request an accommodation, contact the department no later than 5:00 p.m. on November 8, 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 rules as proposed to be adopted provide as follows:

[RULE I] EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), NUTRITION SERVICES (1) Nutrition services may include:

(a) nutrition counseling for counseling directly with a child, or with a responsible care giver, to explain the nutrition assessment and to implement a plan of nutrition care;

(b) nutrition assessment for evaluation of a child's nutritional problems, and design of a plan to prevent, improve or resolve identified nutritional problems, based upon the health objectives, resources and capacity of the child;

(c) nutrition consultation for consultation with or for health professionals, researching or resolving special nutrition

problems or referring a child to other services, pertaining to the nutritional needs of a child; or

(d) nutrition education for routine education for normal nutritional needs.

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

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

[RULE II] EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), CHIROPRACTIC SERVICES

(1) Chiropractic services are limited to evaluation and management office visits, manual manipulation of the spine, and x-rays to support the diagnosis of subluxation of the spine.

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

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

[RULE III] EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), OUTPATIENT CHEMICAL DEPENDENCY TREATMENT SERVICES

(1) Outpatient chemical dependency treatment may include:

- (a) intensive outpatient treatment; and
- (b) basic outpatient treatment.

(2) Outpatient chemical dependency treatment must be determined appropriate by a certified chemical dependency counselor.

(3) Outpatient chemical dependency treatment must be delivered by facilities or programs approved by the department.

(4) Consultation for treatment by a certified chemical dependency counselor with a parent as part of the child's treatment must be billed to medicaid under the child's name and medicaid number. The provider must indicate on the claim that the child is the patient, and state the child's diagnosis and indicate consultation was with the parent.

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

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

[RULE IV] EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), PRIVATE DUTY NURSING SERVICES

(1) Private duty nursing services include:

(a) skilled nursing services provided directly to a child; and

(b) patient-specific training provided to a registered nurse or licensed practical nurse when a child is new to the nursing agency, when a change in the condition of a child requires additional training for the current nurse, or when a change in nursing personnel requires a new nurse to be trained to care for a child.

(2) Private duty nursing services do not include:

- (a) psychological or mental health counseling;
- (b) nurse supervision services including chart review, case discussion or scheduling by a registered nurse; or
- (c) travel time to and from the recipient's place of

service.

(3) Private duty nursing services must be authorized prior to the provision of services and any time the plan of care is amended. Authorization must be renewed with the department or the department's designated review agent every 90 days during the first 6 months of services, and every 6 months thereafter.

(a) Authorization is based on approval of a plan of care by the department or department's designated review agent.

(b) A provider of private duty nursing services must be an incorporated entity meeting the legal criteria for independent contractor status that either employs or contracts with nurses for the provision of nursing services. The department does not contract with or reimburse individual nurses as providers of private duty nursing services.

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

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

[RULE V] EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), THERAPEUTIC YOUTH GROUP HOME SERVICES (1) The therapeutic portion of medically necessary therapeutic youth group home treatment is covered if the treatment is ordered by a licensed physician, licensed psychologist, masters level licensed clinical social worker (MSW) or a licensed professional counselor (LPC), and prior-authorized by the department or its designee according to the provisions of ARM 37.88.101.

(a) The therapeutic portion of intensive level therapeutic youth group home treatment, as defined in ARM Title 37, chapters 37 and 97, is covered if provided by a therapeutic youth group home licensed by and contracted with the department to provide intensive level therapeutic youth group home services.

(b) The therapeutic portion of campus based therapeutic youth group home treatment, as defined in ARM Title 37, chapters 37 and 97, is covered if provided by a therapeutic youth group home licensed by and contracted with the department to provide campus based therapeutic youth group home services.

(c) The therapeutic portion of moderate level therapeutic youth group home treatment, as defined in ARM Title 37, chapters 37 and 97, is covered if provided by a therapeutic youth group home licensed by and contracted with the department to provide moderate level therapeutic youth group home services.

(d) Medicaid will not reimburse for room, board, maintenance or any other non-therapeutic component of youth group home treatment.

(e) If the therapeutic youth group home provider's facility is not located within the state of Montana, the provider must maintain a current license in the equivalent category under the laws of the state in which the facility is located.

(2) Medicaid reimbursement is not available for therapeutic youth group home services unless the provider submits to the department or its designee in accordance with these rules a complete and accurate certificate of need. The

certificate of need must certify the necessary level of care and, for intensive level services, must certify that 4 of the criteria in (2)(a) through (e) are met, or for moderate or campus-based level services, must certify that 3 of the criteria in (2)(a) through (e) are met. The recipient:

(a) is experiencing psychiatric symptoms of a severe or persistent nature that require more intensive treatment and clinical supervision than can be provided by outpatient mental health services;

(b) is at significant risk for placement in a more restrictive environment if therapeutic living care is not provided, or the recipient is currently being treated or maintained in a more restrictive environment and requires a structured treatment environment in order to be successfully treated in a less restrictive setting;

(c) has a prognosis for beneficial treatment at a level of care lower than therapeutic living is very poor because the recipient demonstrates one or more of the following:

(i) significantly impaired interpersonal or social functioning;

(ii) significantly impaired educational or occupational functioning;

(iii) lack of family or other community or social support networks;

(iv) impairment of judgment; or

(v) poor impulse control;

(d) exhibits an inability to perform daily living activities due to a mental, emotional or eating disorder; and

(e) exhibits maladaptive or disruptive behaviors due to a mental, emotional or eating disorder.

(3) For recipients determined medicaid eligible by the department as of the time of admission to the therapeutic youth group home, the certificate of need required under (2) must be:

(a) completed, signed and dated prior to, but no more than 30 days before, admission; and

(b) made by a team of health care professionals that has competence in diagnosis and treatment of mental illness, and that has knowledge of the recipient's situation, including the recipient's psychiatric condition. The team must include a physician that has competence in diagnosis and treatment of mental illness, preferably in child psychiatry, and must be a licensed mental health professional. The certificate of need must also be signed by an intensive case manager employed by a mental health center or other individual knowledgeable about local mental health services as designated by the department. No more than one member of the team of health care professionals may be professionally or financially associated with a therapeutic youth group home program.

(4) For recipients determined medicaid eligible by the department after admission to or discharge from the therapeutic youth group home, the certificate of need required under (2) is waived. A retrospective review to determine the medical necessity of the admission to the program and the treatment provided will be completed by the department or its designee at

the request of the department, a provider, the individual or the individual's parent or guardian. Request for retrospective review must be:

(a) received within 14 days after the eligibility determination for recipients determined eligible following admission, but before discharge from the therapeutic youth group home; or

(b) received within 90 days after the eligibility determination for recipients determined eligible after discharge from the therapeutic youth group home.

(5) All certificates of need required under (2) must actually and personally be signed by each team member, except that signature stamps may be used if the team member actually and personally initials the document over the signature stamp.

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

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

[RULE VI] EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), THERAPEUTIC FAMILY CARE TREATMENT SERVICES

(1) The therapeutic portion of medically necessary therapeutic family care treatment is covered for recipients with a primary diagnosis of severe emotional disturbance (SED) as defined in ARM 37.86.3702, or with both an emotional disturbance and a developmental disability, if the treatment is ordered by a licensed physician, licensed psychologist, masters level licensed clinical social worker (MSW) or a licensed professional counselor (LPC), and prior-authorized by the department or its designee according to the provisions of ARM 37.88.101.

(a) The therapeutic portion of intensive level therapeutic family care treatment, as defined in ARM Title 37, chapters 37 and 97, is covered if provided by a therapeutic family care agency licensed by and contracted with the department to provide intensive level therapeutic family care service.

(b) The therapeutic portion of moderate level therapeutic family care treatment, as defined in ARM Title 37, chapters 37 and 97, is covered if provided by a therapeutic family care agency licensed by and contracted with the department to provide moderate level therapeutic family care service.

(c) The therapeutic portion of permanency therapeutic family care treatment, as defined in (2)(c)(i), is covered if provided by a therapeutic family care agency licensed by and contracted with the department to provide intensive therapeutic family care services.

(i) Permanency therapeutic family care treatment is intensive level therapeutic family care treatment for which the family placement is permanent and which includes:

(A) care coordination case management;

(B) individual, family and group therapies;

(C) clinical supervision provided by a licensed psychologist on a 1:20 ratio;

(D) a treatment manager who is a masters or bachelors level social worker with 3 years experience, on a 1:6 ratio;

(E) therapeutic aide services averaging at least 10 hours

per week;

(F) respite care at least one weekend per month; and

(G) additional specialized training for families.

(d) Medicaid will not reimburse for room, board, maintenance or any other non-therapeutic component of therapeutic family care treatment.

(2) Medicaid reimbursement is not available for therapeutic youth family care services unless the provider submits to the department or its designee in accordance with these rules a complete and accurate certificate of need. The certificate of need must certify the necessary level of care and, for intensive level services, must certify that 4 of the criteria in (2)(a) through (e) are met, or for moderate level services, must certify that 3 of the criteria in (2)(a) through (e) are met. The recipient:

(a) is experiencing psychiatric symptoms of a severe or persistent nature that require more intensive treatment and clinical supervision than can be provided by outpatient mental health services;

(b) is at significant risk for placement in a more restrictive environment if therapeutic family care is not provided, or the recipient is currently being treated or maintained in a more restrictive environment and requires a structured treatment environment in order to be successfully treated in a less restrictive setting;

(c) has a prognosis for beneficial treatment at a level of care lower than therapeutic family care is very poor because the recipient demonstrates one or more of the following:

(i) significantly impaired interpersonal or social functioning;

(ii) significantly impaired educational or occupational functioning;

(iii) lack of family or other community or social support networks;

(iv) impairment of judgment; or

(v) poor impulse control;

(d) exhibits an inability to perform daily living activities due to a mental, emotional or eating disorder; and

(e) exhibits maladaptive or disruptive behaviors due to a mental, emotional or eating disorder.

(3) For recipients determined medicaid eligible by the department as of the time of admission to the therapeutic youth family care, the certificate of need required under (2) must be:

(a) completed, signed and dated prior to, but no more than 30 days before, admission; and

(b) made by a team of health care professionals that has competence in diagnosis and treatment of mental illness and that has knowledge of the recipient's situation, including the recipient's psychiatric condition. The team must include a physician that has competence in diagnosis and treatment of mental illness, preferably in child psychiatry, and must be a licensed mental health professional. The certificate of need must also be signed by an intensive case manager employed by a mental health center or other individual knowledgeable about

local mental health services as designated by the department. No more than one member of the team of health care professionals may be professionally or financially associated with a therapeutic family care program.

(4) For recipients determined medicaid eligible by the department after admission to or discharge from the therapeutic youth family care, the certificate of need required under (2) is waived. A retrospective review to determine the medical necessity of the admission to the program and the treatment provided will be completed by the department or its designees at the request of the department, a provider, the individual or the individual's parent or guardian. Request for retrospective review must be:

(a) received within 14 days after the eligibility determination for recipients determined eligible following admission, but before discharge from therapeutic youth family care; or

(b) received 90 days after the eligibility determination for recipients determined eligible after discharge from therapeutic youth family care.

(5) All certificates of need required under (2) must actually and personally be signed by each team member, except that signature stamps may be used if the team member actually and personally initials the document over the signature stamp.

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

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

[RULE VII] OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, CLINICAL DIAGNOSTIC LABORATORY SERVICES

(1) Clinical diagnostic laboratory services will be reimbursed on a fee basis as follows:

(a) The fee for a clinical diagnostic laboratory service is the lesser of the provider's usual and customary charge (billed charges) or the applicable percentage of the medicare fee schedule as follows:

(i) 60% of the prevailing medicare fee schedule where a hospital laboratory acts as an independent laboratory, i.e., performs tests for persons who are non-hospital patients;

(ii) 62% of the prevailing medicare fee schedule for a hospital designated as a sole community hospital as defined in ARM 37.86.2901;

(iii) 60% of the prevailing medicare fee schedule for a hospital that is not designated as a sole community hospital as defined in ARM 37.86.2901;

(b) For clinical diagnostic laboratory services where no medicare fee has been assigned, the fee is 62% of usual and customary charges (billed charges) for a hospital designated as a sole community hospital as defined in ARM 37.86.2901 or 60% of usual and customary charges (billed charges) for a hospital that is not designated as a sole community hospital as defined in ARM 37.86.2901.

(c) For purposes of this rule, clinical diagnostic laboratory services include the laboratory tests listed in codes



80002-89399 of the Current Procedural Terminology, Fourth Edition (CPT-4). Certain tests are exempt from the fee schedule. These tests are listed in the HCFA Pub-45, State Medicaid Manual, Payment For Services, Section 6300. These exempt clinical diagnostic laboratory services will be reimbursed under the retrospective payment methodology specified in ARM 37.86.3005(2).

(d) Specimen collection will be reimbursed separately for drawing a blood sample through venipuncture or for collecting a urine sample by catheterization. The fee for specimen collection is the lower of the provider's usual and customary charges (billed charges) or \$3.00 per patient visit, whether or not the specimens are referred to physicians or other laboratories for testing. No more than one collection fee may be allowed for each patient visit, regardless of the number of specimens drawn.

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

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

[RULE VIII] OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, EMERGENCY ROOM AND CLINICAL SERVICES

(1) Emergency room and clinic services provided by hospitals that are not isolated hospitals or medical assistance facilities as defined in ARM 37.86.2902(17) and (18) will be reimbursed on a fee basis for each visit as follows:

(a) Emergency room and clinic services will be classified into one of three service groups for reimbursement purposes. Each service group will have two fees, one for sole community hospitals as defined in ARM 37.86.2901, and one for non-sole community hospitals. The three service groups are defined as follows:

(i) Critical emergency room visits are emergency room visits in which the recipient receives critical care procedures, dies while in the emergency room or is discharged or transferred to another short term general hospital for inpatient care.

(A) Critical care procedures are those procedures designated by the department as such and identified in the department's emergency room critical care procedures list. The department hereby adopts and incorporates by reference the outpatient hospital emergency room critical care procedures list (January 1996). A copy of the emergency room critical care procedures list may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(ii) Emergency visits are emergency room visits for which the ICD-9-CM diagnosis code chiefly responsible for the services provided is a diagnosis designated as an emergency diagnosis in the medicaid passport program emergency diagnosis list. For purposes of this rule, the department hereby adopts and incorporates by reference the passport emergency diagnosis list (January 1997). The passport program emergency diagnosis list is available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400

Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(iii) Other emergency room and clinic visits are emergency room and clinic visits that do not meet the criteria for the critical or emergency visit groups specified in (1)(a)(i) or (ii) of this rule.

(b) Fees for emergency room and clinic service groups described in (1)(a)(i) through (iii) above for sole community hospitals and non-sole community hospitals are specified in the department's outpatient hospital emergency room fee schedule. The department hereby adopts and incorporates herein by reference the outpatient hospital emergency room fee schedule (June 1998). A copy of the emergency room fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(c) Except as provided in (1)(c)(i) and (ii), the fee specified in (1)(b) or (d) is an all inclusive bundled payment per visit which covers all outpatient services provided to the patient, including but not limited to nursing, pharmacy, supplies, equipment and other outpatient hospital services.

(i) Physician services are separately billable according to the applicable rules governing billing for physician services.

(ii) In addition to the fee specified for each emergency room and clinic service group, medicaid will reimburse providers separately as specified in [Rule VII, Rule XI and Rule XII] for laboratory, imaging and other diagnostic services provided during emergency and clinic visits.

(d) For hospital emergency room and clinic visits determined by the department to be unstable, the fee will be a stop-loss payment. If the provider's net usual and customary (billed charges) emergency room or clinic charges are more than 400% or less than 75% of the fee specified in (1)(b), the visit is unstable and the net charges will be paid at the statewide cost to charge ratio specified in ARM 37.86.3005(3). For purposes of the stop-loss provision, the provider's net emergency room or clinic charges are defined as total usual and customary claim charges (billed charges) less charges for laboratory, imaging, other diagnostic and any noncovered services.

(e) Emergency visits as defined in (1)(a)(ii) and other emergency room and clinic visits as defined in (1)(a)(iii) with ICD-9-CM surgical or major diagnostic procedure codes will be grouped into one of the ambulatory surgery day procedure groups described in [Rule XIII].

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

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

[RULE IX] OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, NON-EMERGENCY EMERGENCY ROOM SERVICES

(1) Non-emergent emergency room services provided to a passport recipient, when the passport provider has not authorized the services, will be reimbursed a prospective fee of

\$20 per emergency room visit plus ancillary reimbursement for laboratory, imaging and other diagnostic services. The fee is a bundled payment per visit for all outpatient services provided to the patient including, but not limited to, nursing, pharmacy, supplies and equipment and other outpatient hospital services. Physician services are separately billable according to the applicable rules governing billing for physician services.

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

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

[RULE X] OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, DIALYSIS SERVICES (1) Dialysis visits will be reimbursed at the provider's medicare composite rate for dialysis services determined by medicare under 42 CFR subpart H. The facility's composite rate is a comprehensive prospective payment for all modes of facility and home dialysis and constitutes payment for the complete dialysis treatment, except for a physician's professional services, separately billable laboratory services and separately billable drugs. The provider must furnish all of the necessary dialysis services, equipment and supplies. Reimbursement for dialysis services and supplies is further defined in the Medicare Provider Reimbursement Manual, HCFA Pub. 15 (referred to as "Pub. 15"). For purposes of specifying the services covered by the composite rate and the services that are separately billable, the department hereby adopts and incorporates by reference Pub. 15. A copy of Pub. 15 may be obtained through the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

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

[RULE XI] OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, IMAGING SERVICES (1) Imaging services will be reimbursed on a fee basis. For each imaging service or procedure, the fee will be the lesser of the provider's usual and customary charges (billed charges) or 160% of the technical component of the medicare resource-based relative value scale (RBRVS) or, if there is no technical component under RBRVS for the procedure, the fee will be 100% of the global amount of the medicare RBRVS. The imaging services reimbursed under this subsection are the individual imaging services listed in the 70000 series of the Current Procedural Terminology, Fourth Edition (CPT-4). For imaging services where no medicare fee has been assigned, the fee is 62% of usual and customary charges (billed charges) for a hospital designated as a sole community hospital as defined in ARM 37.86.2901 or 60% of usual and customary charges (billed charges) for a hospital that is not designated as a sole community hospital as defined in ARM 37.86.2901.

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

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

[RULE XII] OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, OTHER DIAGNOSTIC SERVICES (1) Other diagnostic services will be reimbursed on a fee basis. For each diagnostic service or procedure, the fee will be the lesser of the provider's usual and customary charges (billed charges) or 160% of the technical component of the medicare resource-based relative value scale (RBRVS) or, if there is no technical component under RBRVS for the procedure, the fee will be 100% of the global amount of the medicare RBRVS. The individual diagnostic services reimbursed under this subsection are those listed in the Current Procedural Terminology, Fourth Edition (CPT-4) in Addendum I, of the Medicare Hospital Manual, (HCFA Pub. 10).

(a) Other diagnostic services contained in the CPT-4 manual that are not listed in Addendum I will be reimbursed under the retrospective cost basis as specified in ARM 37.86.3005(2).

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

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

[RULE XIII] OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, AMBULATORY SURGERY SERVICES

(1) Ambulatory surgery services provided by hospitals that are not isolated hospitals or medical assistance facilities as defined in ARM 37.86.2902(17) and (18) will be reimbursed on a fee basis. A separate fee will be paid within each day procedure group depending on whether or not the hospital is a sole community hospital as defined in ARM 37.86.2901. Payment for ambulatory surgery services is a fee for each visit determined as follows:

(a) The department assigns a day procedure group (DPG) to each medicaid visit as specified in the DPG ambulatory surgery classification system developed by the Canadian institute for health information (CIHI). The DPG system is an ambulatory surgery classification system that assigns patients to one of 66 groups according to the principal ICD-9-CM procedure code recorded on the UB-92 claim form.

(b) The department determines a fee for each day procedure group which reflects the estimated cost of hospital resources used to treat cases in that group relative to the statewide average cost of all medicaid cases. Fees for day procedure groups for sole community hospitals and non-sole community hospitals are specified in the department's outpatient hospital fee schedule. The department hereby adopts and incorporates by reference the outpatient hospital ambulatory surgery fee schedule (June 1998). A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(c) Except as provided in (1)(c)(i) and (ii), the payment specified in (1)(b) or (d) is an all inclusive bundled payment

per visit which covers all outpatient services provided to the patient, including but not limited to nursing, pharmacy, laboratory, imaging services, other diagnostic services, supplies and equipment and other outpatient hospital services. For purposes of outpatient hospital ambulatory surgery services, a visit includes all outpatient hospital services related or incident to the ambulatory surgery visit that are provided the day before or the day of the ambulatory surgery event.

(i) Physician services are separately billable according to the applicable rules governing billing for physician services.

(ii) Payment for certified registered nurse anesthetists (CRNAs) will be based on cost as a pass through in the cost settlement, as provided in ARM 37.86.2905.

(d) For hospital ambulatory surgery services, day procedure groups determined by the department to be unstable will be reimbursed a stop-loss payment. If the provider's net usual and customary charges (billed charges) are more than 400% or less than 75% of the fee specified in (1)(b), the day procedure group is unstable and the net charges will be paid at the statewide cost to charge ratio specified in ARM 37.86.3005(3). For purposes of the stop-loss provision, the provider's net ambulatory surgery charges are defined as total usual and customary claim charges (billed charges) less charges for any noncovered services.

(e) If the department's outpatient hospital ambulatory surgery fee schedule described in (1)(b) does not assign a fee for a particular DPG, the DPG will be reimbursed at the statewide average outpatient cost to charge ratio specified in ARM 37.86.3005(3).

(f) Ambulatory surgery services for which the primary ICD-9-CM procedure code is not included in the day procedure grouper described in (1)(a) will be reimbursed under the retrospective cost basis as specified in ARM 37.86.3005(2).

AUTH: Sec. 53-2-201 and 53-6-101, MCA

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

[RULE XIV] OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, PARTIAL HOSPITALIZATION SERVICES

(1) Partial hospitalization services will be reimbursed on a prospective per diem rate which shall be the lesser of:

(a) the amount specified in the department's medicaid mental health fee schedule. The per diem rates specified in the department's medicaid mental health fee schedule are bundled prospective per diem rates for full-day programs and half-day programs, as defined in ARM 37.86.3001. The bundled prospective per diem rate includes all outpatient psychiatric and psychological treatments and services, laboratory and imaging services, drugs, biologicals, supplies, equipment, therapies, nurses, social workers, psychologists, licensed professional counselors and other outpatient services, that are part of or incident to the partial hospitalization program, except as provided in the department's medicaid mental health fee

schedule; or

(b) an amount of up to 25% less than the amount specified in the department fee schedule if the department determines that:

(i) the average per case cost of mental health service plan expenditures times the number of enrollees will exceed total appropriations; and

(ii) there is no other means by which the department can reasonably reduce the cost of mental health services.

(2) The professional component of physician services, including psychiatrist services, is separately billable according to the applicable department rules governing billing for physician services.

(3) All partial hospitalization services for full-day programs and half-day programs, as defined in ARM 37.86.3001, require prior authorization as required in ARM 37.86.2801.

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

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

[RULE XV] MENTAL HEALTH SERVICES PLAN, APPLICATION FORMS, INCOME VERIFICATION (1) Application forms and information regarding eligibility for the plan are available at all local county human services departments.

(2) The applicant must submit with the application form a completed and signed income statement and the necessary documentation to verify the income reported.

(3) For purposes of (2), necessary income verification may include one or more of the following or other appropriate and persuasive documentation:

- (a) pay stubs or other pay statements;
- (b) employee's W-2 forms;
- (c) state or federal income tax returns and associated forms and schedules;
- (d) union records;
- (e) check copies;
- (f) self-employment bookkeeping records;
- (g) sales and expenditure records;
- (h) employer's wage or payroll records;
- (i) award notices or award letters;
- (j) correspondence specifying a benefit;
- (k) records of any government payer;
- (l) court records or correspondence from attorneys;
- (m) financial institution records;
- (n) insurance company correspondence or records; or
- (o) college or university financial aid correspondence or records.

AUTH: Sec. 41-3-1103, 53-2-201, 53-6-113, 53-6-131, 53-6-701 and 53-6-706, MCA

IMP: Sec. 41-3-1103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

[RULE XVI] MENTAL HEALTH SERVICES PLAN, ELIGIBILITY REDETERMINATIONS, MEMBERS REQUIRED TO NOTIFY DEPARTMENT OF CHANGES, REPAYMENT OF BENEFITS (1) Eligibility determinations under ARM 46.20.106 are effective until the earlier of:

- (a) 1 year; or
- (b) the effective date of any redetermination.
- (2) The department may redetermine eligibility at any time.

(a) Eligibility must be redetermined within 1 year after the most recent determination or sooner based upon changes in income, family composition or the federal poverty level. Members may be required to submit completed forms and verification by a specified date for purposes of eligibility redetermination.

(b) Members must give notice of any change in total family income or family composition within 30 days of the change. Failure to give notice will be grounds for termination of eligibility until such time as complete and accurate income and family composition information is provided.

(c) Termination of eligibility, based upon a change in the federal poverty level, income or family composition, may not be effective earlier than 10 days after mailing of written notice of termination to the member.

(d) An individual is liable to the department and the department may collect from the individual the amount of actual payments by the department or its agents to providers for any services furnished to the individual because of misrepresentation of income or a failure to give the required notice of changes in income or family composition.

AUTH: Sec. 41-3-1103, 53-2-201, 53-6-113, 53-6-131, 53-6-701 and 53-6-706, MCA

IMP: Sec. 41-3-1103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

[RULE XVII] MENTAL HEALTH SERVICES PLAN, EMERGENCY MENTAL HEALTH SERVICES, LIABILITY FOR FAILURE TO COMPLETE APPLICATION

(1) A nonmember receiving covered emergency mental health services, which do not include hospital emergency room or other hospital services, is eligible on an emergency basis for the plan and may receive covered medically necessary services for a covered diagnosis unless the provider determines that the individual has the means, financially or otherwise, by which to make payment. If the individual is subsequently determined ineligible for the plan or fails to complete an application for plan eligibility within 60 days following completion of emergency treatment, the individual is liable for and may be billed by the provider at its usual and customary (billed charges) private pay charges or by the department for the amount of payments actually made by the department or its agents to the provider for the services provided.

AUTH: Sec. 41-3-1103, 53-2-201, 53-6-113, 53-6-131, 53-6-

701 and 53-6-706, MCA

IMP: Sec. 41-3-1103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

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

37.86.105 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) remains the same.

~~(2) Subject to the requirements of this rule, the Montana medicaid program pays the following for physician services:~~

~~(a) For services provided to persons who are eligible for medicaid, the lower of:~~

~~(i) the provider's usual and customary charge for the service; or~~

~~(ii) the department's fee schedule maintained in accordance with the methodologies described in (3) and ARM 37.85.212.~~

(2) Reimbursement for physician services, except as otherwise provided in this rule, is the lower of:

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

(b) the department's fee schedule maintained in accordance with the methodologies described in ARM 37.85.212; or

~~(b) (c) For for services provided to persons who are eligible for both medicare and medicaid, reimbursement is made for the medicare deductible and coinsurance. However, total reimbursement from medicare and medicaid shall not exceed the medicaid fee for the service.~~

(3) Reimbursement for services of a psychiatrist, except as otherwise provided in this rule, is the lower of:

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

(b) to address problems of access to mental health services, subject to funding, up to 125% of the reimbursement for physicians provided in accordance with the methodologies described in ARM 37.85.212.

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

AUTH: Sec. 53-6-113, MCA

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

37.86.2206 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), MEDICAL AND OTHER SERVICES

(1) remains the same.

(2) In addition to the services generally available to medicaid recipients, the following services are available to EPSDT eligible persons:

~~(a) Nutrition services:~~

~~(i) Nutrition services may include:~~

~~(A) Nutrition counseling for counseling directly with a~~



~~child, or with a responsible care giver, to explain the nutrition assessment and to implement a plan of nutrition care.~~

~~(B) Nutrition assessment for evaluation of a child's nutritional problems, and design of a plan to prevent, improve or resolve identified nutritional problems, based upon the health objectives, resources and capacity of the child.~~

~~(C) Nutrition consultation for consultation with or for health professionals, researching or resolving special nutrition problems or referring a child to other services, pertaining to the nutritional needs of a child.~~

~~(D) Nutrition education for routine education for normal nutritional needs.~~

~~(b) Chiropractic services:~~

~~(i) Chiropractic services are limited to evaluation and management office visits, manual manipulation of the spine, and x-rays to support the diagnosis of subluxation of the spine.~~

~~(c) Outpatient chemical dependency treatment:~~

~~(i) Outpatient chemical dependency treatment may include:~~

~~(A) Intensive outpatient treatment; and~~

~~(B) Basic outpatient treatment;~~

~~(ii) Outpatient chemical dependency treatment must be determined appropriate by a certified chemical dependency counselor.~~

~~(iii) Outpatient chemical dependency treatment must be delivered by facilities or programs approved by the department.~~

~~(iv) Consultation for treatment by a certified chemical dependency counselor with a parent as part of the child's treatment must be billed to medicaid under the child's name and medicaid number. The provider must indicate on the claim that the child is the patient, and state the child's diagnosis and indicate consultation was with the parent.~~

~~(d) Respiratory care services ordered by a physician.~~

~~(e) Pharmaceutical drugs approved for use under investigational drug status by the federal drug administration and provided under specific controlled programs under the supervision of a physician.~~

~~(f) Private duty nursing:~~

~~(i) Private duty nursing services include:~~

~~(A) skilled nursing services provided directly to a child; and~~

~~(B) patient-specific training provided to a registered nurse or licensed practical nurse when a child is new to the nursing agency, when a change in the condition of a child requires additional training for the current nurse, or when a change in nursing personnel requires a new nurse to be trained to care for a child.~~

~~(ii) Private duty nursing services do not include:~~

~~(A) psychological or mental health counseling;~~

~~(B) nurse supervision services including chart review, case discussion or scheduling by a registered nurse; or~~

~~(C) travel time to and from the recipient's place of service.~~

~~(iii) Private duty nursing services must be authorized prior to the provision of services and any time the plan of care~~

is amended. Authorization must be renewed with the department or the department's designated review agent every 90 days during the first 6 months of services, and every 6 months thereafter.

(A) Authorization is based on approval of a plan of care by the department or department's designated review agent.

(iv) A provider of private duty nursing services must be an incorporated entity meeting the legal criteria for independent contractor status that either employs or contracts with nurses for the provision of nursing services. The department does not contract with or reimburse individual nurses as providers of private duty nursing services.

(g) The therapeutic portion of medically necessary therapeutic youth group home treatment is covered if the treatment is ordered by a licensed physician, licensed psychologist, masters level licensed clinical social worker (MSW) or a licensed professional counselor (LPC), and prior-authorized by the department or its designee according to the provisions of ARM 37.88.101.

(i) The therapeutic portion of intensive level therapeutic youth group home treatment, as defined in ARM Title 37, chapters 37 and 97, is covered if provided by a therapeutic youth group home licensed by and contracted with the department to provide intensive level therapeutic youth group home services.

(ii) The therapeutic portion of campus based therapeutic youth group home treatment, as defined in ARM Title 37, chapters 37 and 97, is covered if provided by a therapeutic youth group home licensed by and contracted with the department to provide campus based therapeutic youth group home services.

(iii) The therapeutic portion of moderate level therapeutic youth group home treatment, as defined in ARM Title 37, chapters 37 and 97, is covered if provided by a therapeutic youth group home licensed by and contracted with the department to provide moderate level therapeutic youth group home services.

(iv) Medicaid will not reimburse for room, board, maintenance or any other non-therapeutic component of youth group home treatment.

(v) If the therapeutic youth group home provider's facility is not located within the state of Montana, the provider must maintain a current license in the equivalent category under the laws of the state in which the facility is located.

(h) Medicaid reimbursement is not available for therapeutic youth group home services unless the provider submits to the department or its designee in accordance with these rules a complete and accurate certificate of need. The certificate of need must certify the necessary level of care and, for intensive level services, must certify that 4 of the criteria in (2)(h)(i) through (v) are met, or for moderate or campus-based level services, must certify that 3 of the criteria in (2)(h)(i) through (v) are met.

(i) the recipient is experiencing psychiatric symptoms of a severe or persistent nature that require more intensive treatment and clinical supervision than can be provided by outpatient mental health services;

~~(ii) the recipient is at significant risk for placement in a more restrictive environment if therapeutic living care is not provided, or the recipient is currently being treated or maintained in a more restrictive environment and requires a structured treatment environment in order to be successfully treated in a less restrictive setting;~~

~~(iii) the recipient's prognosis for beneficial treatment at a level of care lower than therapeutic living is very poor because the recipient demonstrates one or more of the following:~~

~~(A) significantly impaired interpersonal or social functioning;~~

~~(B) significantly impaired educational or occupational functioning;~~

~~(C) lack of family or other community or social support networks;~~

~~(D) impairment of judgment;~~

~~(E) poor impulse control;~~

~~(iv) the recipient exhibits an inability to perform daily living activities due to a mental, emotional or eating disorder; and~~

~~(v) the recipient exhibits maladaptive or disruptive behaviors due to a mental, emotional or eating disorder.~~

~~(i) For recipients determined medicaid eligible by the department as of the time of admission to the therapeutic youth group home, the certificate of need required under (2)(h) must:~~

~~(i) be completed, signed and dated prior to, but no more than 30 days before, admission; and~~

~~(ii) be made by an independent team of health care professionals that has competence in diagnosis and treatment of mental illness, and that has knowledge of the recipient's situation, including the recipient's psychiatric condition. The team must include a physician that has competence in diagnosis and treatment of mental illness, preferably in child psychiatry, a licensed mental health professional and an intensive case manager employed by a mental health center.~~

~~(j) For recipients determined medicaid eligible by the department after admission to or discharge from the therapeutic youth group home, the certificate of need required under (2)(h) must:~~

~~(i) be completed, signed and dated within:~~

~~(A) 14 days after the eligibility determination for recipients determined eligible during the admission to the therapeutic youth group home; or~~

~~(B) 90 days after the eligibility determination for recipients determined eligible after discharge from the therapeutic youth group home;~~

~~(ii) cover the recipient's period from admission to the therapeutic youth group home through the date the certification is completed; and~~

~~(iii) be made by the facility team responsible for the recipient's plan of care.~~

~~(k) All certificates of need required under (2)(h) must actually and personally be signed by each team member, except that signature stamps may be used if the team member actually~~

and personally initials the document over the signature stamp.

(l) The therapeutic portion of medically necessary therapeutic family care treatment is covered for recipients with a primary diagnosis of severe emotional disturbance (SED) as defined in ARM 37.86.3702, or with both an emotional disturbance and a developmental disability, if the treatment is ordered by a licensed physician, licensed psychologist, masters level licensed clinical social worker (MSW) or a licensed professional counselor (LPC), and prior-authorized by the department or its designee according to the provisions of ARM 37.88.101.

(i) The therapeutic portion of intensive level therapeutic family care treatment, as defined in ARM Title 37, chapters 37 and 97, is covered if provided by a therapeutic family care agency licensed by and contracted with the department to provide intensive level therapeutic family care service.

(ii) The therapeutic portion of moderate level therapeutic family care treatment, as defined in ARM Title 37, chapters 37 and 97, is covered if provided by a therapeutic family care agency licensed by and contracted with the department to provide moderate level therapeutic family care service.

(iii) The therapeutic portion of permanency therapeutic family care treatment, as defined in (2)(l)(iii)(A), is covered if provided by a therapeutic family care agency licensed by and contracted with the department to provide intensive therapeutic family care services.

(A) Permanency therapeutic family care treatment is intensive level therapeutic family care treatment for which the family placement is permanent and which includes:

- (I) care coordination case management;
- (II) individual, family and group therapies;
- (III) clinical supervision provided by a licensed psychologist on a 1:20 ratio;
- (IV) a treatment manager who is a masters or bachelors level social worker with 3 years experience, on a 1:6 ratio;
- (V) therapeutic aide services averaging at least 10 hours per week;
- (VI) respite care at least one weekend per month; and
- (VII) additional specialized training for families.

(iv) Medicaid will not reimburse for room, board, maintenance or any other non-therapeutic component of therapeutic family care treatment.

(m) Medicaid reimbursement is not available for therapeutic youth family care services unless the provider submits to the department or its designee in accordance with these rules a complete and accurate certificate of need. The certificate of need must certify the necessary level of care and, for intensive level services, must certify that 4 of the criteria in (2)(m)(i) through (v) are met, or for moderate level services, must certify that 3 of the criteria in (2)(m)(i) through (v) are met.

(i) the recipient is experiencing psychiatric symptoms of a severe or persistent nature that require more intensive treatment and clinical supervision than can be provided by outpatient mental health services;

~~(ii) the recipient is at significant risk for placement in a more restrictive environment if therapeutic family care is not provided, or the recipient is currently being treated or maintained in a more restrictive environment and requires a structured treatment environment in order to be successfully treated in a less restrictive setting;~~

~~(iii) the recipient's prognosis for beneficial treatment at a level of care lower than therapeutic family care is very poor because the recipient demonstrates one or more of the following:~~

~~(A) significantly impaired interpersonal or social functioning;~~

~~(B) significantly impaired educational or occupational functioning;~~

~~(C) lack of family or other community or social support networks;~~

~~(D) impairment of judgment;~~

~~(E) poor impulse control;~~

~~(iv) the recipient exhibits an inability to perform daily living activities due to a mental, emotional or eating disorder; and~~

~~(v) the recipient exhibits maladaptive or disruptive behaviors due to a mental, emotional or eating disorder.~~

~~(n) For recipients determined medicaid eligible by the department as of the time of admission to the therapeutic youth family care, the certificate of need required under (2)(m) must:~~

~~(i) be completed, signed and dated prior to, but no more than 30 days before, admission; and~~

~~(ii) be made by an independent team of health care professionals that has competence in diagnosis and treatment of mental illness and that has knowledge of the recipient's situation, including the recipient's psychiatric condition. The team must include a physician that has competence in diagnosis and treatment of mental illness, preferably in child psychiatry, a licensed mental health professional and an intensive case manager employed by a mental health center.~~

~~(o) For recipients determined medicaid eligible by the department after admission to or discharge from the therapeutic youth family care, the certificate of need required under (2)(m) must:~~

~~(i) be completed, signed and dated within:~~

~~(A) 14 days after the eligibility determination for recipients determined eligible during the admission to the therapeutic youth family care; or~~

~~(B) 90 days after the eligibility determination for recipients determined eligible after discharge from the therapeutic youth family care;~~

~~(ii) cover the recipient's period from admission to the therapeutic youth family care through the date the certification is completed; and~~

~~(iii) be made by the facility team responsible for the recipient's plan of care.~~

~~(p) All certificates of need required under (2)(m) must actually and personally be signed by each team member, except~~

~~that signature stamps may be used if the team member actually and personally initials the document over the signature stamp.~~

- ~~(a) nutrition services as provided in [Rule I];~~
- ~~(b) chiropractic services as provided in [Rule II];~~
- ~~(c) outpatient chemical dependency treatment as provided in [Rule III];~~
- ~~(d) private duty nursing as provided in [Rule IV];~~
- ~~(e) the therapeutic portion of medically necessary therapeutic youth group home treatment as provided in [Rule V];~~
- ~~(f) the therapeutic portion of medically necessary therapeutic family care treatment as provided in [Rule VI].~~

~~(3) Requests for prior authorization must be made in writing to the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, Addictive and Mental Disorders Division, Mental Health Program, 1400 Broadway, P.O. Box 202951, 1400 Broadway, Helena, MT 59620-2951, or by phoning the medicaid services bureau at (406) 444-4540 to the department's designee.~~

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

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

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) through (2) remain the same.

(3) Reimbursement for the therapeutic portion of therapeutic youth group home treatment services is the lesser of: as follows:

- ~~(a) for intensive level therapeutic youth group home services, \$157.56 per patient day;~~
- ~~(b) for campus based therapeutic youth group home services, \$128.67 per patient day; or~~
- ~~(c) for moderate level therapeutic youth group home services, \$85 per patient day.~~

(a) the amount specified in the department's medicaid mental health fee schedule. The department hereby adopts and incorporates herein by reference the department's medicaid mental health fee schedule dated July, 2000. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951; or

(b) an amount of up to 25% less than the amount specified in the department fee schedule if the department determines that:

- (i) the average per case cost of mental health service plan expenditures times the number of enrollees will exceed total appropriations; and
- (ii) there is no other means by which the department can reasonably reduce the cost of mental health services.

(4) Reimbursement for the therapeutic portion of therapeutic family care treatment services is the lesser of: as follows:

- ~~(a) for intensive level therapeutic family care services, \$59.86 per patient day;~~

~~(b) for moderate level therapeutic family care services, \$40.15 per patient day; or~~

~~(c) for permanency therapeutic family care services, \$111.10 per patient day, which covers and includes all individual, group and family therapy, respite care and care coordination case management services provided to the recipient.~~

(a) the amount specified in the department's medicaid mental health fee schedule; or

(b) an amount of up to 25% less than the amount specified in the department fee schedule if the department determines that:

(i) the average per case cost of mental health service plan expenditures times the number of enrollees will exceed total appropriations; and

(ii) there is no other means by which the department can reasonably reduce the cost of mental health services.

(5) remains the same.

(6) Reimbursement will be made to a provider for reserving a therapeutic youth group home or therapeutic youth family care, (other than permanency therapeutic family care,) bed while the recipient is temporarily absent only if:

(a) the recipient's plan of care documents the medical need for therapeutic home visits as part of a therapeutic plan to transition the recipient to a less restrictive level of care;

(b) and (c) remain the same.

(d) the recipient is absent from the provider's facility for no more than ~~72 consecutive hours~~ 3 patient days per absence, unless the department or its designee determines that a longer absence is medically appropriate and has authorized the longer absence in advance of the absence; and

(e) if the therapeutic home visit is in excess of ~~48 hours~~ 2 patient days, the visit has been approved by the department in advance of the visit. Requests for approval under this subsection must be received by the department or its designee at least 2 working days in advance of the start of the visit.

(7) No more than 14 patient days per recipient in each rate year will be allowed for therapeutic home visits. For purposes of this 14-day limit, all therapeutic home visits must be included whether or not such visits were of sufficient length to require advance approval under (6)(e).

(a) The provider must report to the department or its designee each therapeutic home visit of ~~48 hours or less~~ 2 or fewer patient days within 30 days after the start of the visit. Each visit must be reported on a form acceptable to the department.

(8) through (10) remain the same.

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

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

37.86.2801 ALL HOSPITAL REIMBURSEMENT, GENERAL

(1) Reimbursement for inpatient hospital services is set forth in ARM 37.86.2905. Reimbursement for outpatient hospital services is set forth in ARM 37.86.3005. The reimbursement

period will be the provider's fiscal year. Cost of hospital services will be determined for inpatient and outpatient care separately. Administratively necessary days are not a benefit of the Montana medicaid program.

(a) The department may require providers of inpatient or outpatient hospital services to obtain authorization from the department or its designated review organization either prior to provision of services or prior to payment.

(i) Medicaid reimbursement shall not be made unless the provider has obtained authorization from the department or its designated review organization prior to providing any of the following services:

(A) inpatient psychiatric services provided in an acute care general hospital or a distinct part psychiatric unit of an acute care general hospital, as required by ARM 37.88.101.

(B) inpatient rehabilitation services;

(C) all inpatient hospital services provided in hospitals located more than 100 miles outside the borders of the state of Montana;

(D) services related to organ transplantations covered under ARM 37.86.4701 and 37.86.4705; or

(E) outpatient partial hospitalization, as required by ARM 37.88.101.

(b) Medicaid reimbursement is not available for outpatient partial hospitalization services unless the provider submits to the department or its designee in accordance with these rules a complete and accurate certificate of need, certifying that:

(i) the recipient is experiencing psychiatric symptoms of sufficient severity to create moderate to severe impairments in educational, social, vocational, and/or interpersonal functioning;

(ii) the recipient cannot be safely and appropriately treated or contained in a less restrictive level of care;

(iii) proper treatment of the beneficiary's psychiatric condition requires acute treatment services on an outpatient basis under the direction of a physician;

~~(iv) the recipient can be safely and effectively managed in a partial hospitalization setting without significant risk of harm to self or others;~~

~~(v)~~ (iv) the services can reasonably be expected to improve the recipient's condition or prevent further regression; and

~~(vi)~~ (v) the recipient has exhausted or cannot be safely and effectively treated by less restrictive alternative services, including day treatment services or a combination of day treatment and other services.

(c) For recipients determined medicaid eligible by the department as of the time of admission to the partial hospitalization program, the certificate of need required under (1)(b) must be:

(i) be completed, signed and dated prior to, but no more than 30 days before, admission; and

(ii) be made by an independent a team of health care professionals that has competence in diagnosis and treatment of



mental illness and that has knowledge of the recipient's situation, including the recipient's psychiatric condition. The team must include a physician that has competence in diagnosis and treatment of mental illness, preferably in child psychiatry, a licensed mental health professional and an intensive case manager employed by a mental health center or other individual knowledgeable about local mental health services as designated by the department. No more than one member of the team of health care professionals may be professionally or financially associated with a partial hospitalization program.

(d) For recipients who are being transferred from a hospital's acute inpatient program to the same facility's partial hospitalization program, the certificate of need required under (1)(b) may be completed by a facility-based team of health care professionals that has competence in diagnosis and treatment of mental illness and that has knowledge of the recipient's psychiatric condition. The team must include a physician that has competence in diagnosis and treatment of mental illness, preferably in psychiatry, and a licensed mental health professional. The certificate of need must also be signed by an intensive case manager employed by a mental health center or other individual knowledgeable about local mental health services as designated by the department.

(d) (e) For recipients determined medicaid eligible by the department after admission to or discharge from the facility, the certificate of need required under (1)(b) must: is waived. A retrospective review to determine the medical necessity of the admission to the program and the treatment provided will be completed by the department or its designee at the request of the department, a provider, the individual or the individual's parent or guardian. Request for retrospective review must be:

(i) be completed, signed and dated within:

(A) 14 days after the eligibility determination for recipients determined eligible during the admission to the outpatient partial hospitalization program; or

(B) 90 days after the eligibility determination for recipients determined eligible after discharge from the outpatient partial hospitalization program;

(ii) cover the recipient's period from admission to the outpatient partial hospitalization program through the date the certification is completed; and

(iii) be made by the facility team responsible for the recipient's plan of care.

(i) received within 14 days after the eligibility determination for recipients determined eligible following admission, but before discharge from the partial hospitalization program; or

(ii) received 90 days after the eligibility determination for recipients determined eligible after discharge from the partial hospitalization program.

(e) (f) All certificates of need required under (1)(b) must actually and personally be signed by each team member, except that signature stamps may be used if the team member actually and personally initials the document over the signature

stamp.

(f) (g) Prior authorization is not a guarantee of payment as medicaid rules and regulations, client eligibility, or additional medical information on retrospective review may cause the department to refuse payment.

(2) through (8) remain the same.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA

IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.3001 OUTPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) through (4) remain the same.

~~(5) "Partial hospitalization services" means partial hospitalization as defined in the Montana medicaid partial hospitalization policy (May 1995 edition). The department adopts and incorporates by reference the Montana medicaid partial hospitalization policy (May 1995 edition). A copy of the policy may be obtained through the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

(5) "Partial hospitalization services" means an active treatment program that offers therapeutically intensive, coordinated, structured clinical services provided only to individuals who are determined to have a serious emotional disturbance or severe disabling mental illness. Partial hospitalization services are time-limited and provided within a program that is co-located with the psychiatric unit of a general hospital or with an inpatient psychiatric hospital for individuals under 21. Partial hospitalization services include day, evening, night and weekend treatment programs that employ an integrated, comprehensive and complementary schedule of recognized treatment or therapeutic activities.

(6) and (7) remain the same.

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

37.86.3005 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) remains the same.

(2) Except for the services reimbursed as provided in (3) through ~~(12)~~ [Rule VII through Rule XIV], all facilities will be reimbursed on a retrospective basis. Allowable costs will be determined in accordance with ARM ~~46.12.509~~ 37.85.2801(2) and subject to the limitations specified in ARM ~~46.12.509~~ 37.85.2801(2)(a), (b) and (c). The department may waive retrospective cost settlement for such facilities which have received interim payments totaling less than \$100,000 for inpatient and outpatient hospital services provided to Montana medicaid recipients in the cost reporting period, unless the provider requests in writing retrospective cost settlement. Where the department waives retrospective cost settlement, the provider's interim payments for the cost report period shall be

the provider's final payment for the period.

(a) All facilities will be reimbursed for services subject to (2) on an interim basis during the facility's fiscal year. The interim rate will be a percentage of usual and customary charges (billed charges). The percentage shall be the provider's cost to charge ratio determined by the facility's medicare intermediary or by the department under medicare reimbursement principles, based upon the provider's most recent medicare cost report. If a provider fails or refuses to submit the financial information, including the medicare cost report, necessary to determine the cost to charge ratio, the provider's interim rate will be 60% of its usual and customary charges (billed charges).

~~(3) Except as otherwise specified in these rules, the following outpatient hospital services will be reimbursed under a prospective payment methodology for each service as described in (4) through (12) of this rule.~~

~~(4) Clinical diagnostic laboratory services will be reimbursed on a fee basis as follows:~~

~~(a) The fee for a clinical diagnostic laboratory service is the lower of the provider's usual and customary charge or the applicable percentage of the medicare fee schedule as follows:~~

~~(i) 60% of the prevailing medicare fee schedule where a hospital laboratory acts as an independent laboratory, i.e., performs tests for persons who are non-hospital patients;~~

~~(ii) 62% of the prevailing medicare fee schedule for a hospital designated as a sole community hospital as defined in ARM 37.86.2901;~~

~~(iii) 60% of the prevailing medicare fee schedule for a hospital that is not designated as a sole community hospital as defined in ARM 37.86.2901;~~

~~(b) For clinical diagnostic laboratory services where no medicare fee has been assigned, the fee is 62% of usual and customary charges for a hospital designated as a sole community hospital as defined in ARM 37.86.2901 or 60% of usual and customary charges for a hospital that is not designated as a sole community hospital as defined in ARM 37.86.2901.~~

~~(c) For purposes of (4), clinical diagnostic laboratory services include the laboratory tests listed in codes 80002-89399 of the Current Procedural Terminology, Fourth Edition (CPT-4). Certain tests are exempt from the fee schedule. These tests are listed in the HCFA Pub-45, State Medicaid Manual, Payment For Services, Section 6300. These exempt clinical diagnostic laboratory services will be reimbursed under the retrospective payment methodology specified in (2).~~

~~(d) Specimen collection will be reimbursed separately for drawing a blood sample through venipuncture or for collecting a urine sample by catheterization. The fee for specimen collection is the lower of the provider's usual and customary charges or \$3.00 per patient visit, whether or not the specimens are referred to physicians or other laboratories for testing. No more than one collection fee may be allowed for each patient visit, regardless of the number of specimens drawn.~~

~~(5) Emergency room and clinic services provided by~~

hospitals that are not isolated hospitals or medical assistance facilities as defined in ARM 37.86.2902(17) and (18) will be reimbursed on a fee basis for each visit as follows.

(a) Emergency room and clinic services will be classified into one of three service groups for reimbursement purposes. Each service group will have two fees, one for sole community hospitals as defined in ARM 37.86.2901, and one for non-sole community hospitals. The three service groups are defined as follows:

(i) Critical emergency room visits are emergency room visits in which the recipient receives critical care procedures, dies while in the emergency room or is discharged or transferred to another short term general hospital for inpatient care.

(A) Critical care procedures are those procedures designated by the department as such and identified in the department's emergency room critical care procedures list. The department hereby adopts and incorporates by reference the outpatient hospital emergency room critical care procedures list (January 1996). A copy of the emergency room critical care procedures list may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(ii) Emergency visits are emergency room visits for which the ICD-9-CM diagnosis code chiefly responsible for the services provided is a diagnosis designated as an emergency diagnosis in the medicaid passport program emergency diagnosis list for purposes of this rule, the department hereby adopts and incorporates by reference the passport emergency diagnosis list (January 1997). The passport program emergency diagnosis list is available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(iii) Other emergency room and clinic visits are emergency room and clinic visits that do not meet the criteria for the critical or emergency visit groups specified in (5)(a)(i) or (ii).

(b) Fees for emergency room and clinic service groups described in (5)(a)(i) through (iii) above for sole community hospitals and non-sole community hospitals are specified in the department's outpatient hospital emergency room fee schedule. The department hereby adopts and incorporates herein by reference the outpatient hospital emergency room fee schedule (June 1998). A copy of the emergency room fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(c) Except as provided in (5)(c)(i) and (ii), the fee specified in (5)(b) or (d) is an all inclusive bundled payment per visit which covers all outpatient services provided to the patient, including but not limited to nursing, pharmacy, supplies, equipment and other outpatient hospital services.

(i) Physician services are separately billable according to the applicable rules governing billing for physician services.

~~(ii) In addition to the fee specified for each emergency room and clinic service group, medicaid will reimburse providers separately as specified in (4), (8) and (9) for laboratory, imaging and other diagnostic services provided during emergency and clinic visits.~~

~~(d) For hospital emergency room and clinic visits determined by the department to be unstable, the fee will be a stop-loss payment. If the provider's net usual and customary emergency room or clinic charges are more than 400% or less than 75% of the fee specified in (5)(b), the visit is unstable and the net charges will be paid at the statewide cost to charge ratio specified in (12). For purposes of the stop-loss provision, the provider's net emergency room or clinic charges are defined as total usual and customary claim charges less charges for laboratory, imaging, other diagnostic and any noncovered services.~~

~~(e) Emergency visits as defined in (5)(a)(ii) and other emergency room and clinic visits as defined in (5)(a)(iii) with ICD-9-CM surgical or major diagnostic procedure codes will be grouped into one of the ambulatory surgery day procedure groups described in (10).~~

~~(6) Non-emergent emergency room services provided to a passport recipient, when the passport provider has not authorized the services, will be reimbursed a prospective fee of \$20 per emergency room visit plus ancillary reimbursement for laboratory, imaging and other diagnostic services. The fee is a bundled payment per visit for all outpatient services provided to the patient including, but not limited to, nursing, pharmacy, supplies and equipment and other outpatient hospital services. Physician services are separately billable according to the applicable rules governing billing for physician services.~~

~~(7) Dialysis visits will be reimbursed at the provider's medicare composite rate for dialysis services determined by medicare under 42 CFR subpart H. The facility's composite rate is a comprehensive prospective payment for all modes of facility and home dialysis and constitutes payment for the complete dialysis treatment, except for a physician's professional services, separately billable laboratory services and separately billable drugs. The provider must furnish all of the necessary dialysis services, equipment and supplies. Reimbursement for dialysis services and supplies is further defined in the Medicare Provider Reimbursement Manual, HCFA Pub. 15 (referred to as "Pub. 15"). For purposes of specifying the services covered by the composite rate and the services that are separately billable, the department hereby adopts and incorporates by reference Pub. 15. A copy of Pub. 15 may be obtained through the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(8) Imaging services will be reimbursed on a fee basis. For each imaging service or procedure, the fee will be the lower of the provider's usual and customary charges or 160% of the technical component of the medicare resource-based relative value scale (RBRVS) or, if there is no technical component under~~

RBRVS for the procedure, the fee will be 100% of the global amount of the medicare RBRVS. The imaging services reimbursed under this subsection are the individual imaging services listed in the 70000 series of the Current Procedural Terminology, Fourth Edition (CPT-4). For imaging services where no medicare fee has been assigned, the fee is 62% of usual and customary charges for a hospital designated as a sole community hospital as defined in ARM 37.86.2901 or 60% of usual and customary charges for a hospital that is not designated as a sole community hospital as defined in ARM 37.86.2901.

(9) Other diagnostic services will be reimbursed on a fee basis. For each diagnostic service or procedure, the fee will be the lower of the provider's usual and customary charges or 160% of the technical component of the medicare resource-based relative value scale (RBRVS) or, if there is no technical component under RBRVS for the procedure, the fee will be 100% of the global amount of the medicare RBRVS. The individual diagnostic services reimbursed under this subsection are those listed in the Current Procedural Terminology, Fourth Edition (CPT-4) in Addendum I, of the Medicare Hospital Manual, (HCFA Pub. 10).

(a) Other diagnostic services contained in the CPT-4 manual that are not listed in Addendum I will be reimbursed under the retrospective cost basis as specified in ARM 37.86.3005(2).

(10) Ambulatory surgery services provided by hospitals that are not isolated hospitals or medical assistance facilities as defined in ARM 37.86.2902(17) and (18) will be reimbursed on a fee basis. A separate fee will be paid within each day procedure group depending on whether or not the hospital is a sole community hospital as defined in ARM 37.86.2901. Payment for ambulatory surgery services is a fee for each visit determined as follows:

(a) The department assigns a day procedure group (DPG) to each medicaid visit as specified in the DPG ambulatory surgery classification system developed by the Canadian institute for health information (CIHI). The DPG system is an ambulatory surgery classification system that assigns patients to one of 66 groups according to the principal ICD-9-CM procedure code recorded on the UB-92 claim form.

(b) The department determines a fee for each day procedure group which reflects the estimated cost of hospital resources used to treat cases in that group relative to the statewide average cost of all medicaid cases. Fees for day procedure groups for sole community hospitals and non-sole community hospitals are specified in the department's outpatient hospital fee schedule. The department hereby adopts and incorporates by reference the outpatient hospital ambulatory surgery fee schedule (June 1998). A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(c) Except as provided in (10)(c)(i) and (ii), the payment specified in (10)(b) or (d) is an all inclusive bundled payment

per visit which covers all outpatient services provided to the patient, including but not limited to nursing, pharmacy, laboratory, imaging services, other diagnostic services, supplies and equipment and other outpatient hospital services. For purposes of outpatient hospital ambulatory surgery services, a visit includes all outpatient hospital services related or incident to the ambulatory surgery visit that are provided the day before or the day of the ambulatory surgery event.

(i) Physician services are separately billable according to the applicable rules governing billing for physician services.

(ii) Payment for certified registered nurse anesthetists (CRNAs) will be based on cost as a pass through in the cost settlement, as provided in ARM 37.86.2905.

(d) For hospital ambulatory surgery services, day procedure groups determined by the department to be unstable will be reimbursed a stop-loss payment. If the provider's net usual and customary charges are more than 400% or less than 75% of the fee specified in (10)(b), the day procedure group is unstable and the net charges will be paid at the statewide cost to charge ratio specified in (11). For purposes of the stop-loss provision, the provider's net ambulatory surgery charges are defined as total usual and customary claim charges less charges for any noncovered services.

(e) If the department's outpatient hospital ambulatory surgery fee schedule described in (10)(b) does not assign a fee for a particular DPG, the DPG will be reimbursed at the statewide average outpatient cost to charge ratio specified in (11).

(f) Ambulatory surgery services for which the primary ICD-9-CM procedure code is not included in the day procedure grouper described in (10)(a) will be reimbursed under the retrospective cost basis as specified in ARM 37.86.3005(2).

(11) Partial hospitalization services will be reimbursed on a prospective per diem rate basis as follows:

(a) The per diem rate for full-day programs, as defined in ARM 37.86.3001, is \$196 per day.

(b) The per diem rate for half-day programs, as defined in ARM 37.86.3001, is \$147 per day.

(c) The per diem rates specified in (11)(a) and (b) are bundled prospective per diem rates for full-day programs and half-day programs, as defined in ARM 37.86.3001. The bundled prospective per diem rate includes all outpatient psychiatric and psychological treatments and services, laboratory and imaging services, drugs, biologicals, supplies, equipment, therapies, nurses, social workers, psychologists, licensed professional counselors and other outpatient services, that are part of or incident to the partial hospitalization program, except as provided in (11)(a).

(d) The professional component of physician services, including psychiatrist services, is separately billable according to the applicable department rules governing billing for physician services.

(e) All partial hospitalization services for full-day

~~programs and half-day programs, as defined in ARM 37.86.3001, require prior authorization as required in ARM 46.12.509.~~

(12) (3) The medicaid outpatient hospital statewide average cost to charge ratio equals .67.

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

37.86.3502 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, ELIGIBILITY (1) Case management services are available under ARM 37.86.3501, 37.86.3502 37.86.3504, 37.86.3506, 37.86.3507 and 37.86.3515 only to adults (age 18 or over) with severe disabling mental illness.

(2) "Severe disabling mental illness" means with respect to a person who is 18 or more years of age that the person has:

(a) ~~presents an imminent risk of suicide as determined by a licensed mental health professional; or~~

(b) ~~meets the requirements that:~~

(i) ~~the person has a severe mental illness as indicated by:~~

(A) (a) ~~the person has been hospitalized for at least 30 consecutive days because of a mental disorder at Montana state hospital (Warm Spring campus) at least once;~~

(B) (b) ~~the person has a DSM-IV diagnosis with a severity specifier of moderate or severe of:~~

(i) ~~schizophrenic disorder (295);~~

(ii) ~~other psychotic disorder (295.40, 295.70, 297.1, 297.3, 298.9, 293.81, 293.82);~~

(iii) ~~mood disorder (296.2x, 296.3x, 296.40, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89, 296.90, 301.13, 293.83);~~

(iv) ~~amnestic disorder (294.0, 294.8);~~

(v) ~~disorder due to a general medical condition (310.1);~~

or

(vi) ~~pervasive developmental disorder not otherwise specified (299.80) when not accompanied by mental retardation;~~  
or

(C) (c) ~~the person has a DSM-IV diagnosis with a severity specifier of moderate or severe of personality disorder (301.00, 301.20, 301.22, 301.4, 301.50, 301.6, 301.81, 301.82, 301.83, or 301.90) which causes the person to be unable to work competitively on a full-time basis or to be unable to maintain a residence without assistance and support by family or a public agency for a period of at least 6 months or is obviously predictable to continue for a period of at least 6 months; and~~

(ii) (d) ~~the person has ongoing functioning difficulties because of the mental illness for a period of at least 6 months or for an obviously predictable period over 6 months, as indicated by one of the following:~~

(A) (i) ~~a physician has determined that medication is necessary to control the symptoms of mental illness;~~

(B) (ii) ~~the person is unemployed or does not work in a full-time competitive situation because of mental illness;~~

(C) (iii) ~~the person receives SSI or SSDI payments due to~~



mental illness; or

(D) (iv) the person maintains or could maintain a living arrangement only with the ongoing supervision and assistance of family or a public agency.

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

37.86.3702 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, ELIGIBILITY (1) Case management services are available under ARM 37.86.3701, 37.86.3702, 37.86.3705, 37.86.3706, 37.86.3707 and 37.86.3715 only to youth with serious emotional disturbance.

(2) "Serious emotional disturbance (SED)" means with respect to a youth that the youth meets the following requirements: between the ages of 6 and 17 years that the youth meets requirements of (2)(a), (b) or (c).

(a) is identified as having an emotional disturbance as defined in 20-7-401(8), MCA with respect to which the youth is currently receiving special education services;

(b) presents an imminent risk of suicide as determined by a licensed mental health professional; or

(c) meets all of the following 3 requirements:

(i) the youth demonstrates a need for specialized services to address serious problems related to emotional disturbance in at least 2 of the 4 areas of family relationships, peer relationships, school performance, and delinquent behavior;

(ii) the youth has been determined by a licensed mental health professional as having a mental disorder with a primary diagnosis falling within one of the following DSM-IV (or successor) classifications when applied to the youth's current presentation (current means within the past 12 calendar months unless otherwise specified in the DSM-IV) and the diagnosis has a severity specifier of moderate or severe: attention deficit/hyperactivity disorder (314.00, 314.01, 314.9); childhood schizophrenia (295.10, 295.20, 295.30, 295.60, 295.90); oppositional defiant disorder (313.81); pervasive developmental disorder not otherwise specified (299.80); Asperger's disorder (299.80); separation anxiety disorder (309.21); reactive attachment disorder of infancy or early childhood (313.89); schizo affective disorder (295.70); mood disorders (296.0x, 296.2x, 296.3x, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89, 296.90); psychotic disorder not otherwise specified (298.9); obsessive-compulsive disorder (300.3); dysthymic disorder (300.4); depressive disorder not otherwise specified (311); cyclothymic disorder (301.13); generalized anxiety disorder (overanxious disorder) (300.02); posttraumatic stress disorder (chronic) (309.81); dissociative identity disorder (300.14); sexual and gender identity disorder (302.2, 302.3, 302.4, 302.6, 302.82, 302.83, 302.84, 302.85, 302.89); anorexia nervosa (severe) (307.1); bulimia nervosa (severe) (307.51); kleptomania (312.32); pyromania (312.33); trichotillomania (312.39); intermittent explosive disorder (312.34); and personality disorder (301.4, 301.5, 301.81); or

~~conduct disorder (312.8) when accompanied by at least one of the diagnoses listed above; and~~

~~(iii) for a period of at least 6 months (or for a predicted period over 6 months), the youth consistently and persistently:~~

~~(A) has failed to establish or maintain interpersonal relationships appropriate to the youth's developmental stage and cultural environment;~~

~~(B) has displayed behavior inappropriate to the youth's developmental stage and culture;~~

~~(C) has failed to demonstrate a range of emotion or mood appropriate to the youth's developmental stage and culture;~~

~~(D) has displayed disruptive behavior sufficient to lead to isolation in or from school, home, therapeutic or recreation settings; or~~

~~(E) has displayed behavior considered seriously detrimental to the youth's growth, development or welfare, or to the safety or welfare of others.~~

(a) The youth has been determined by a licensed mental health professional as having a mental disorder with a primary diagnosis falling within one of the following DSM-IV (or successor) classifications when applied to the youth's current presentation (current means within the past 12 calendar months unless otherwise specified in the DSM-IV) and the diagnosis has a severity specifier of moderate or severe:

(i) childhood schizophrenia (295.10, 295.20, 295.30, 295.60, 295.90);

(ii) oppositional defiant disorder (313.81);

(iii) autistic disorder (299.00);

(iv) pervasive developmental disorder not otherwise specified (299.80);

(v) asperger's disorder (299.80);

(vi) separation anxiety disorder (309.21);

(vii) reactive attachment disorder of infancy or early childhood (313.89);

(viii) schizo affective disorder (295.70);

(ix) mood disorders (296.0x, 296.2x, 296.3x, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89);

(x) obsessive-compulsive disorder (300.3);

(xi) dysthymic disorder (300.4);

(xii) cyclothymic disorder (301.13);

(xiii) generalized anxiety disorder (overanxious disorder) (300.02);

(xiv) posttraumatic stress disorder (chronic) (309.81);

(xv) dissociative identity disorder (300.14);

(xvi) sexual and gender identity disorder (302.2, 302.3, 302.4, 302.6, 302.82, 302.83, 302.84, 302.85, 302.89);

(xvii) anorexia nervosa (severe) (307.1);

(xviii) bulimia nervosa (severe) (307.51);

(xix) intermittent explosive disorder (312.34); and

(xx) attention deficit/hyperactivity disorder (314.00, 314.01, 314.9) when accompanied by at least one of the diagnoses listed above.

(b) As a result of the youth's diagnosis determined in

(2)(a) and for a period of at least 6 months, the youth consistently and persistently demonstrates behavioral abnormality in two or more spheres, to a significant degree, well outside normative developmental expectations, that cannot be attributed to intellectual, sensory, or health factors:

(i) has failed to establish or maintain developmentally and culturally appropriate relationships with adult care givers or authority figures;

(ii) has failed to demonstrate or maintain developmentally and culturally appropriate peer relationships;

(iii) has failed to demonstrate a developmentally appropriate range and expression of emotion or mood;

(iv) has displayed disruptive behavior sufficient to lead to isolation in or from school, home, therapeutic or recreation settings;

(v) has displayed behavior that is seriously detrimental to the youth's growth, development, safety or welfare, or to the safety or welfare of others; or

(vi) has displayed behavior resulting in substantial documented disruption to the family including, but not limited to, adverse impact on the ability of family members to secure or maintain gainful employment.

(c) In addition to mental health services, the youth demonstrates a need for specialized services from at least one of the following human service systems during the previous 6 months:

(i) education services, due to the diagnosis determined in (a), as evidenced by identification as a child with a disability as defined in 20-7-401(4), MCA with respect to which the youth is currently receiving special education services;

(ii) child protective services as evidenced by temporary investigative authority, or temporary or permanent legal custody;

(iii) the juvenile correctional system, due to the diagnosis determined in (2)(a), as evidenced by a youth court consent adjustment or consent decree or youth court adjudication; or

(iv) current alcohol/drug abuse or addiction services as evidenced by participation in treatment through a state-approved program or with a certified chemical dependency counselor.

(d) Serious emotional disturbance (SED) with respect to a youth under 6 years of age means the youth exhibits a severe behavioral abnormality that cannot be attributed to intellectual, sensory, or health factors and that results in substantial impairment in functioning for a period of at least 6 months and obviously predictable to continue for a period of at least 6 months, as manifested by one or more of the following:

(i) atypical, disruptive or dangerous behavior which is aggressive or self-injurious;

(ii) atypical emotional responses which interfere with the child's functioning, such as an inability to communicate emotional needs and to tolerate normal frustrations;

(iii) atypical thinking patterns which, considering age

and developmental expectations, are bizarre, violent or hypersexual;

(iv) lack of positive interests in adults and peers or a failure to initiate or respond to most social interaction;

(v) indiscriminate sociability (e.g., excessive familiarity with strangers) that results in a risk of personal safety of the child; or

(vi) inappropriate and extreme fearfulness or other distress which does not respond to comfort by care givers.

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

IMP: Sec. 53-6-101, MCA

37.88.901 MENTAL HEALTH CENTER SERVICES, DEFINITIONS

(1) remains the same.

(2) "Adult day treatment" means a program which provides, in accordance with mental health center license requirements, a variety of mental health services to adults with a severe disabling mental illness.

(3) "Child or adolescent" means a person 17 years of age and younger, and or a person who is older as long as the person remains under 21 years of age and is enrolled in secondary school.

(4) remains the same.

(5) "Child and adolescent intensive day treatment" means a program which provides integrated, multi-disciplinary mental health and education services to youth with serious emotional disturbance within a self-contained setting in a mental health center facility. Intensive day treatment programs must be approved by the addictive and mental disorders division.

~~(5)~~ (6) "Community-based psychiatric rehabilitation and support" means services provided in home, school, workplace, and community settings for adults with severe and disabling mental illness and youth with serious emotional disturbance. Services are provided by trained mental health personnel under the direction of and according to individualized treatment plans prepared by licensed professionals. The services are provided outside of normal clinical or mental health program settings and are designed to assist individuals in developing the skills, behaviors, and emotional stability necessary to live successfully in the community. Community-based psychiatric rehabilitation and support services are provided on a face-to-face basis with the recipient, family members, teachers, employers or other key individuals in the recipient's life when such contacts are clearly necessary to meet goals established in the recipient's individual treatment plan.

(a) through (a)(iv) remain the same.

(b) Community-based psychiatric rehabilitation and support does not include the following services:

(i) through (iv) remain the same.

(v) therapeutic interventions by licensed practitioners, regardless of the location of the service; and

(vi) activities which are purely recreational in nature; and

(vii) services provided within the school classroom that are educational, including, but not limited to educational aides.

(7) "Community mental health center" means a licensed mental health center, governed by a regional mental health corporation board created by 53-21-204, MCA, that provides the comprehensive mental health services listed in 53-21-201(1), MCA.

(6) through (9) remain the same but are renumbered (8) through (11).

~~(10)~~ (12) "Mental health center services" means child and adolescent day treatment services, child and adolescent intensive day treatment services, adult day treatment services, community-based psychiatric rehabilitation and support respite care, school-based mental health services, in-training practitioner services and the therapeutic component of crisis intervention services, foster care for mentally ill adults and mental health group home services, and programs of assertive community services, as defined in these rules.

~~(11)~~ (13) "Mental health group home services" means a supported living environment provided under a group home endorsed mental health center license and providing independent living and social skills development services.

(14) "Program of assertive community treatment" means a self-contained clinical team which:

(a) provides needed treatment, rehabilitation and support services to identified clients with severe disabling mental illness;

(b) minimally refers clients to outside service providers;

(c) provides services on a long-term basis;

(d) delivers 85% or more of team service contacts outside program offices;

(e) serves individuals with severe disabling mental illness (SDMI) who are at least 18 years old, have severe symptoms and impairments not effectively treated by other available, less intensive services, or who have a history of avoiding mental health services;

(f) provides psychiatric services at the rate of at least 12 hours per week for each 40 persons served; and

(g) maintains a ratio of at least one staff person, not including the psychiatrist, for each 10 persons served. Assertive community treatment teams must be approved by the addictive and mental disorders division.

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

~~(15) "School-based mental health services" means mental health center services provided to a child or adolescent in the client's school according to an individualized treatment plan. School-based mental health services includes individual and group therapies, family therapy, care coordination case management, observation and support in the classroom, consultation with teachers, other school personnel, parents and other significant people in the life of the child or adolescent.~~

(16) remains the same but is renumbered (18).

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

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

37.88.905 MENTAL HEALTH CENTER SERVICES, REQUIREMENTS

(1) remains the same.

(2) Mental health center services may be provided only by a facility which:

(a) is licensed as a mental health center by the department in accordance with the provisions of Title 50, chapter 5, part 2, MCA, and implementing administrative rules; or.

(b) ~~has been providing mental health center services under the mental health access plan and has, prior to July 1, 1999, applied for a mental health center license. A mental health center participating in the Montana medicaid program under this subsection, will not be permitted to participate in the medicaid program on or after January 1, 2000 unless it receives licensure with applicable endorsement(s) as a mental health center prior to January 1, 2000.~~

(3) remains the same.

(4) Mental health center services must be available to recipients continuously throughout the year.

(4) through (6)(b) remain the same but are renumbered (5) through (7)(b).

~~(7) (8)~~ For purposes of meeting the minimum hours required in ~~(6)(7)(a)~~ and ~~(6)(7)(b)~~, the provider may not include time during which the recipient is receiving practitioner services which are actually billed separately as practitioner services as permitted under ARM 37.88.906.

~~(8) School-based mental health services must be provided through a program of services staffed by at least 2 mental health workers who work exclusively in the school. At least 1 of the 2 mental health workers must be a licensed psychologist, licensed clinical social worker, or licensed professional counselor with a maximum case load of 12 school or pre-school children.~~

~~(a) School-based mental health services must be provided according to an individualized treatment plan designed by a licensed professional staffing the school-based mental health services program.~~

~~(b) In addition to any clinical records required by mental health center license rules, the provider must maintain for school-based mental health services the records required by ARM 37.85.414, which shall include but are not limited to documentation of the client's attendance in school and in program services, progress notes for each individual therapy session and weekly overall progress notes.~~

(9) remains the same.

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

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

37.88.906 MENTAL HEALTH CENTER SERVICES, COVERED SERVICES

(1) Mental health center services, covered by the medicaid

program, include the following:

- (a) and (b) remain the same.
- (c) child and adolescent intensive day treatment services;
- ~~(c)~~ (d) community-based psychiatric rehabilitation and support;
- (e) program of assertive community treatment;
- ~~(d)~~ (f) respite care services;
- ~~(e)~~ school-based mental health services;
- ~~(f)~~ (g) in-training practitioner services; and
- ~~(g)~~ (h) the therapeutic component of:
- (i) through (6)(c) remain the same.

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

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

37.88.907 MENTAL HEALTH CENTER SERVICES, REIMBURSEMENT

(1) Medicaid reimbursement for mental health center services shall be the lowest of:

(a) the provider's actual (submitted) charge for the service;

~~(b) the amount allowed by medicare (for services covered by medicare); or~~ the amount of medicare deductible and coinsurance for services provided to persons who are eligible for both medicare and medicaid. However, total reimbursement from medicare and medicaid shall not exceed the medicaid fee for the service;

(c) the department's medicaid fee for the service as specified in ~~(2)~~ the department's medicaid mental health fee schedule; or

(d) an amount of up to 25% less than the amount specified in the department fee schedule if the department determines that:

(i) the average per case cost of mental health service plan expenditures times the number of enrollees will exceed total appropriations; and

(ii) there is no other means by which the department can reasonably reduce the cost of mental health services.

~~(2) The medicaid fees for mental health center services are:~~

~~(a) for adult day treatment services:~~

~~(i) \$38.25 per treatment day for a full day; or~~

~~(ii) \$22.95 per treatment day for a half day;~~

~~(b) for child and adolescent day treatment services:~~

~~(i) \$59.75 per treatment day for a full day; or~~

~~(ii) \$35.85 per treatment day for a half day;~~

~~(c) for community-based psychiatric rehabilitation and support, \$20.00 per hour for individual services and \$6.00 per recipient per hour for group services;~~

~~(d) for respite care services, \$10.00 per hour up to a maximum of \$60.00 for a 24-hour period, and no more than \$120.00 per calendar month per recipient;~~

~~(e) for school-based mental health services, \$51.00 per school day for which the client attends school and receives school-based mental health services;~~

~~(f) for in-training practitioner services, the same rate applicable to licensed practitioners for the category of service; and~~

~~(g) for the therapeutic component of:~~

~~(i) crisis intervention services, \$200.00 per treatment day, exclusive of room and board;~~

~~(ii) foster care for mentally ill adults, \$44.00 per treatment day, exclusive of room and board; and~~

~~(iii) mental health adult group home services, \$55.00 per treatment day, exclusive of room and board.~~

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

(3) Reimbursement will be made to a provider for reserving an adult foster care or mental health adult group home bed only if:

(a) the recipient's plan of care documents the medical need for a therapeutic visit as part of a therapeutic plan to transition the recipient to a less restrictive level of care;

(b) the recipient is temporarily absent on a therapeutic visit;

(c) the provider clearly documents staff contact and recipient achievements or regressions during and following the therapeutic visit;

(d) the recipient is absent from the provider's facility for no more than 3 patient days per absence, unless the department or its designee determines that a longer absence is medically appropriate and has authorized the longer absence in advance of the absence;

(e) if the therapeutic visit is in excess of 2 patient days, the visit has been approved by the department in advance of the visit. Requests for approval under this subsection must be received by the department or its designee at least 2 working days in advance of the start of the visit;

(f) no more than 14 patient days per recipient in each rate year will be reimbursed for therapeutic visits. For purposes of this 14-day limit, all therapeutic visits must be included whether or not such visits were of sufficient length to require advance approval under (4)(e);

(g) the provider must report to the department or its designee each therapeutic visit of 2 or fewer patient days within 30 days after the start of the visit. Each visit must be reported on a form acceptable to the department; and

(h) reimbursement for therapeutic visits will not be allowed unless the properly completed form is filed timely with the addictive and mental disorders division or its designee.

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

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

### 37.88.1106 INPATIENT PSYCHIATRIC SERVICES, REIMBURSEMENT

(1) For inpatient psychiatric services provided on or after July 1, 1999, the Montana medicaid program will pay a provider for each patient day as provided in these rules.

(a) Medicaid payment is not allowable for treatment or services provided in a residential treatment facility that are



not within the definition of residential psychiatric care in ARM 37.88.1101 and unless all other applicable requirements are met.

(b) Medicaid payment is not allowable for treatment or services provided in an inpatient psychiatric hospital facility that are not within the definition of inpatient hospital psychiatric care in ARM 37.88.1101 and unless all other applicable requirements are met.

(2) For inpatient psychiatric services provided by a residential treatment facility in the state of Montana, the Montana medicaid program will pay a provider, for each medicaid patient day, a bundled per diem rate as specified in (3), less any third party or other payments.

(3) The statewide bundled per diem rate for inpatient psychiatric services provided by all Montana providers is ~~\$262.71 per patient day the lesser of:~~

(a) the amount specified in the department's medicaid mental health fee schedule; or

(b) an amount of up to 25% less than the amount specified in the department fee schedule if the department determines that:

(i) the average per case cost of mental health service plan expenditures times the number of enrollees will exceed total appropriations; and

(ii) there is no other means by which the department can reasonably reduce the cost of mental health services.

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

~~(4)~~ (5) The rate provided in (3) is an all-inclusive bundled rate. Except as provided in ~~(4)~~ (5)(a) and (b), the per diem payment rate covers and includes all psychiatric services, all therapies required in the recipient's plan of care, and all other services and items related to the psychiatric condition being treated, that are provided while the recipient is admitted to the residential treatment facility, including but not limited to services provided by licensed psychologists, licensed clinical social workers, and licensed professional counselors, and lab and pharmacy services. These services must be reimbursed from the provider's all-inclusive rate except as provided in ~~(4)~~ (5)(a) and (b), and are not separately billable.

(a) and (b) remain the same.

(5) through (7)(a)(ii) remain the same, but are renumbered (6) through (8)(a)(ii).

(b) The department or its designee will not commence a preadmission review for or certify an admission to an out-of-state residential treatment facility until receiving from the prospective facility written verification that the recipient cannot be served within the state of Montana. Written verification must be provided in a form approved by the department or its designee, and must be completed and signed on behalf of in-state facilities indicating that the requirements of ~~(7)~~ (8)(a)(i) or ~~(7)~~ (8)(a)(ii) are met. In-state facilities that do not complete, sign and return the form by fax to the prospective out-of-state provider within 3 days after receipt will be deemed to be unable to serve the recipient.

~~(8)~~ (9) Reimbursement for inpatient psychiatric services

provided to Montana medicaid recipients in facilities located outside the state of Montana will be a percentage of the provider's usual and customary charges (billed charges). The percentage shall be the provider's cost to charge ratio determined by the facility's medicare intermediary or by the department under medicare reimbursement principles, based upon the provider's most recent medicare cost report. If the provider does not submit the medicare cost report and other financial information necessary to determine the cost to charge ratio, the percentage will equal 60% of the provider's usual and customary charges (billed charges).

(a) For facilities located outside the state of Montana, the department may set an interim rate and pay for services using the interim rate until sufficient information has been submitted to determine the provider's final rate under ~~(8)~~ (9). The interim rate shall be 60% of the provider's usual and customary charges (billed charges). If the department pays using an interim rate or, if the department pays for services at a rate determined under ~~(8)~~ (9) but subsequently obtains additional information necessary to fully apply ~~(8)~~ (9), the department may settle the rates and adjust any overpayment or underpayment in accordance with ARM 37.88.1107.

(b) In addition to the requirements of ~~(8)~~ (9)(a), the department may require out-of-state providers to submit a copy of their most recent audit report in those instances where the provider has not prepared or is not required to prepare a health care financing administration (HCFA) form 2552. The audit report must have been performed in accordance with generally accepted auditing standards as defined by the American institute of certified public accountants.

~~(9)~~ (10) Reimbursement will be made to a residential treatment facility provider for reserving a bed while the recipient is temporarily absent only if:

(a) the recipient's plan of care documents the medical need for therapeutic home visits as part of a therapeutic plan to transition the recipient to a less restrictive level of care;

(b) the recipient is temporarily absent on a therapeutic home visit;

(c) the provider clearly documents staff contact and recipient achievements or regressions during and following the therapeutic home visit;

(d) the recipient is absent from the provider's facility for no more than ~~72 consecutive hours~~ 3 patient days per absence, unless the department or its designee determines that a longer absence is medically appropriate and has authorized the longer absence in advance of the absence; and

(e) if the therapeutic home visit is in excess of ~~48 hours~~ 2 patient days, the visit has been approved by the department in advance of the visit. Requests for approval under this subsection must be received by the department or its designee at least 2 working days in advance of the start of the visit.

~~(10)~~ (11) No more than 14 patient days per recipient in each rate year will be allowed for therapeutic home visits. For purposes of this 14-day limit, all therapeutic home visits must

be included whether or not such visits were of sufficient length to require advance approval under ~~(9)~~ (10)(e).

(a) The provider must report to the department or its designee each therapeutic home visit of ~~48 hours or less~~ 2 or fewer patient days within 30 days after the start of the visit. Each visit must be reported on a form acceptable to the department.

(11) and (12) remain the same but are renumbered (12) and (13).

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

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

37.88.1116 INPATIENT PSYCHIATRIC SERVICES, CERTIFICATION OF NEED FOR SERVICES, UTILIZATION REVIEW AND INSPECTIONS OF CARE

(1) through (2) remain the same.

(3) Medicaid reimbursement is not available for inpatient psychiatric services unless the provider submits to the department or its designee in accordance with these rules a complete and accurate certificate of need for services that complies with the requirements of 42 CFR, Part 441, subpart D and these rules.

(a) through (a)(ii) remain the same.

(b) For recipients who are transferred between levels of inpatient psychiatric care within the same facility, the certificate of need may be completed by the facility-based team responsible for the plan of care within 14 days after admission provided that the:

(i) certificate of need has been signed by an intensive case manager employed by a mental health center or other individual knowledgeable about local mental health services as designated by the department; and

(ii) admission has been prior authorized by the department or the department's designee.

(b) through (c) remain the same but are renumbered (c) through (d).

(4) remains the same.

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 and transferred provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

46.20.103 [37.89.103] MENTAL HEALTH SERVICES PLAN, DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) and (2) remain the same.

(3) "Correctional or detention facility" means:

(a) and (b) remain the same.

(c) the Pine Hills school youth correctional facility;

(d) the ~~Boulder River school~~ Riverside youth correctional facility;

(e) through (6) remain the same.

(7) "Federal poverty level" or "FPL" means the 1999 2000 poverty guidelines for the 48 contiguous states and the District of Columbia as published under the "Annual Update of the HHS Poverty Guidelines" in the federal register on ~~March 18, 1999~~ February 15, 2000 and subsequent annual updates.

(8) "Medically necessary" is defined as provided in ARM ~~46.12.102~~ 37.82.102.

(9) through (13) remain the same.

(14) "Serious emotional disturbance (SED)" means with respect to a youth ~~that the youth meets the following requirements: between the ages of 6 and 17 years that the youth meets the following requirements:~~

~~(a) is identified as having an emotional disturbance as defined in 20-7-401(8), MCA with respect to which the youth is currently receiving special education services;~~

~~(b) presents an imminent risk of suicide as determined by a licensed mental health professional; or~~

~~(c) meets all of the following 3 requirements:~~

~~(i) the youth demonstrates a need for specialized services to address serious problems related to emotional disturbance in at least 2 of the 4 areas of family relationships, peer relationships, school performance, and delinquent behavior;~~

~~(ii) the youth has been determined by a licensed mental health professional as having a mental disorder with a primary diagnosis falling within one of the following DSM-IV (or successor) classifications when applied to the youth's current presentation (current means within the past 12 calendar months unless otherwise specified in the DSM-IV) and the diagnosis has a severity specifier of moderate or severe: attention deficit/hyperactivity disorder (314.00, 314.01, 314.9); childhood schizophrenia (295.10, 295.20, 295.30, 295.60, 295.90); oppositional defiant disorder (313.81); pervasive developmental disorder not otherwise specified (299.80); Asperger's disorder (299.80); separation anxiety disorder (309.21); reactive attachment disorder of infancy or early childhood (313.89); schizo affective disorder (295.70); mood disorders (296.0x, 296.2x, 296.3x, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89, 296.90); psychotic disorder not otherwise specified (298.9); obsessive-compulsive disorder (300.3); dysthymic disorder (300.4); depressive disorder not otherwise specified (311); cyclothymic disorder (301.13); generalized anxiety disorder (overanxious disorder) (300.02); posttraumatic stress disorder (chronic) (309.81); dissociative identity disorder (300.14); sexual and gender identity disorder (302.2, 302.3, 302.4, 302.6, 302.82, 302.83, 302.84, 302.85, 302.89); anorexia nervosa (severe) (307.1); bulimia nervosa (severe) (307.51); kleptomania (312.32); pyromania (312.33); trichotillomania (312.39); intermittent explosive disorder (312.34); and personality disorder (301.4, 301.5, 301.81); or conduct disorder (312.8) when accompanied by at least one of the diagnoses listed above; and~~

~~(iii) for a period of at least 6 months (or for a predicted period over 6 months), the youth consistently and~~

persistently:

~~(A) has failed to establish or maintain interpersonal relationships appropriate to the youth's developmental stage and cultural environment;~~

~~(B) has displayed behavior inappropriate to the youth's developmental stage and culture;~~

~~(C) has failed to demonstrate a range of emotion or mood appropriate to the youth's developmental stage and culture;~~

~~(D) has displayed disruptive behavior sufficient to lead to isolation in or from school, home, therapeutic or recreation settings; or~~

~~(E) has displayed behavior considered seriously detrimental to the youth's growth, development or welfare, or to the safety or welfare of others.~~

(a) the youth has been determined by a licensed mental health professional as having a mental disorder with a primary diagnosis falling within one of the following DSM-IV (or successor) classifications when applied to the youth's current presentation (current means within the past 12 calendar months unless otherwise specified in the DSM-IV) and the diagnosis has a severity specifier of moderate or severe:

(i) childhood schizophrenia (295.10, 295.20, 295.30, 295.60, 295.90);

(ii) oppositional defiant disorder (313.81);

(iii) autistic disorder (299.00);

(iv) pervasive developmental disorder not otherwise specified (299.80);

(v) asperger's disorder (299.80);

(vi) separation anxiety disorder (309.21);

(vii) reactive attachment disorder of infancy or early childhood (313.89);

(viii) schizo affective disorder (295.70);

(ix) mood disorders (296.0x, 296.2x, 296.3x, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89);

(x) obsessive-compulsive disorder (300.3);

(xi) dysthymic disorder (300.4);

(xii) cyclothymic disorder (301.13);

(xiii) generalized anxiety disorder (overanxious disorder) (300.02);

(xiv) posttraumatic stress disorder (chronic) (309.81);

(xv) dissociative identity disorder (300.14);

(xvi) sexual and gender identity disorder (302.2, 302.3, 302.4, 302.6, 302.82, 302.83, 302.84, 302.85, 302.89);

(xvii) anorexia nervosa (severe) (307.1);

(xviii) bulimia nervosa (severe) (307.51);

(xix) intermittent explosive disorder (312.34); and

(xx) attention deficit/hyperactivity disorder (314.00, 314.01, 314.9) when accompanied by at least one of the diagnoses listed above.

(b) As a result of the youth's diagnosis determined in (a) and for a period of at least 6 months, the youth consistently and persistently demonstrates behavioral abnormality in two or more spheres, to a significant degree, well outside normative developmental expectations, that cannot be attributed to

intellectual, sensory, or health factors has:

(i) failed to establish or maintain developmentally and culturally appropriate relationships with adult care givers or authority figures;

(ii) failed to demonstrate or maintain developmentally and culturally appropriate peer relationships;

(iii) failed to demonstrate a developmentally appropriate range and expression of emotion or mood;

(iv) displayed disruptive behavior sufficient to lead to isolation in or from school, home, therapeutic or recreation settings;

(v) displayed behavior that is seriously detrimental to the youth's growth, development, safety or welfare, or to the safety or welfare of others; or

(vi) displayed behavior resulting in substantial documented disruption to the family including, but not limited to, adverse impact on the ability of family members to secure or maintain gainful employment.

(c) In addition to mental health services, the youth demonstrates a need for specialized services from at least one of the following human service systems during the previous 6 months:

(i) education services, due to the diagnosis determined in (a), as evidenced by identification as a child with a disability as defined in 20-7-401(4), MCA with respect to which the youth is currently receiving special education services;

(ii) child protective services as evidenced by temporary investigative authority, or temporary or permanent legal custody;

(iii) the juvenile correctional system, due to the diagnosis determined in (14)(a), as evidenced by a youth court consent adjustment or consent decree or youth court adjudication; or

(iv) current alcohol/drug abuse or addiction services as evidenced by participation in treatment through a state-approved program or with a certified chemical dependency counselor.

(d) "Serious emotional disturbance (SED)" with respect to a youth under 6 years of age means the youth exhibits a severe behavioral abnormality that cannot be attributed to intellectual, sensory, or health factors and that results in substantial impairment in functioning for a period of at least 6 months or is predicted to continue for a period of at least 6 months, as manifested by one or more of the following:

(i) atypical, disruptive or dangerous behavior which is aggressive or self-injurious;

(ii) atypical emotional responses which interfere with the child's functioning, such as an inability to communicate emotional needs and to tolerate normal frustrations;

(iii) atypical thinking patterns which, considering age and developmental expectations, are bizarre, violent or hypersexual;

(iv) lack of positive interests in adults and peers or a failure to initiate or respond to most social interaction;

(v) indiscriminate sociability (e.g., excessive

familiarity with strangers) that results in a risk of personal safety of the child; or

(vi) inappropriate and extreme fearfulness or other distress which does not respond to comfort by care givers.

(15) "Severe disabling mental illness" means with respect to a person who is 18 or more years of age that the person:

~~(a) presents an imminent risk of suicide as determined by a licensed mental health professional; or~~

~~(b) meets the requirements that:~~

~~(i) the person has a severe mental illness as indicated by:~~

~~(A) (a) the person has been hospitalized at least 30 consecutive days because of a mental disorder at Montana state hospital (Warm Springs campus) at least once;~~

~~(B) (b) the person has a DSM-IV diagnosis with a severity specifier of moderate or severe of:~~

~~(i) schizophrenic disorder (295);~~

~~(ii) other psychotic disorder (295.40, 295.70, 297.1, 297.3, 298.9, 293.81, 293.82);~~

~~(iii) mood disorder (296.2x, 296.3x, 296.40, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89, 296.90, 301.13, 293.83);~~

~~(iv) amnestic disorder (294.0, 294.8);~~

~~(v) disorder due to a general medical condition (310.1);~~

or

~~(vi) pervasive developmental disorder not otherwise specified (299.80) when not accompanied by mental retardation;~~  
or

~~(C) (c) the person has a DSM-IV diagnosis with a severity specifier of moderate or severe of personality disorder (301.00, 301.20, 301.22, 301.4, 301.50, 301.6, 301.81, 301.82, 301.83, or 301.90) which causes the person to be unable to work competitively on a full-time basis or to be unable to maintain a residence without assistance and support by family or a public agency for a period of at least 6 months or for an obviously predictable period over 6 months; and~~

~~(ii) (d) the person has ongoing functioning difficulties because of the mental illness for a period of at least 6 months or for an obviously predictable period over 6 months, as indicated by one of the following:~~

~~(A) (i) a physician has determined that medication is necessary to control the symptoms of mental illness;~~

~~(B) through (D) remain the same but are renumbered (ii) through (iv).~~

(16) "Total family income" means the total annual gross cash receipts, as defined by the bureau of the census and cited in the "Annual Update of the HHS Poverty Guidelines" in the federal register of March 18, 1999 promulgated each year by the United States Office of Management and Budget, of all members of a family. Regular and continuing sources of income will be appropriately annualized for purposes of determining the annual income level. Extraordinary and nonrecurring income will be considered only for the 12 month period following receipt.

(a) through (18) remain the same.

AUTH: Sec. 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131 and 53-6-701, MCA

IMP: Sec. 41-3-1103, 52-1-103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139 and 53-21-202, MCA

46.20.106 [37.89.106] MENTAL HEALTH SERVICES PLAN, MEMBER ELIGIBILITY (1) An individual is eligible for covered services under the plan if:

(a) and (b) remain the same.

(c) if the individual is under the age of 19 years and the individual is enrolled in or has been denied enrollment in Montana children's health insurance program (CHIP), as established in ARM Title 37, chapter 79. For affected individuals enrolled in the plan on July 31, 2000, this requirement will be effective 60 days following the mailing of written notice by the department to the parent or guardian of record for the individual;

(d) the individual is an adolescent who has met the eligibility requirements of the plan as a youth with serious emotional disturbance, but who will not meet the eligibility requirements of the plan as an adult with severe and disabling mental illness. The individual may continue to be eligible as an adolescent for the purpose of transition to independent living until the age of 21, provided the individual continues to meet income requirements; and

(e) the total number of children and the total number of adults who can be eligible for MHSP at any time is within the limits set by the department as provided in (6) of this rule.

(2) through (3)(c) remain the same.

~~(4) Application forms and information regarding eligibility for the plan are available at all local county human services departments.~~

~~(5) The applicant must submit with the application form a completed and signed income statement and the necessary documentation to verify the income reported.~~

~~(6) For purposes of (5), necessary income verification may include one or more of the following or other appropriate and persuasive documentation:~~

~~(a) pay stubs or other pay statements;~~

~~(b) employee's W-2 forms;~~

~~(c) state or federal income tax returns and associated forms and schedules;~~

~~(d) union records;~~

~~(e) check copies;~~

~~(f) self-employment bookkeeping records;~~

~~(g) sales and expenditure records;~~

~~(h) employer's wage or payroll records;~~

~~(i) award notices or award letters;~~

~~(j) correspondence specifying a benefit;~~

~~(k) records of any government payer;~~

~~(l) court records or correspondence from attorneys;~~

~~(m) financial institution records;~~



~~(n) insurance company correspondence or records; or  
(o) college or university financial aid correspondence or records.~~

~~(7) Eligibility determinations are effective until the earlier of:~~

~~(a) 1 year; or~~

~~(b) the effective date of any redetermination.~~

~~(8) The department may redetermine eligibility at any time.~~

~~(a) The department may accept for purposes of initial eligibility under this rule a prior determination of eligibility under the mental health access plan (MHAP), if the individual's eligibility remained effective as of the date of termination of the MHAP. Initial eligibility provided under this subsection must be redetermined in accordance with (8)(b);~~

~~(b) Eligibility must be redetermined within 1 year after the most recent determination or sooner based upon changes in income, family composition or the federal poverty level. Members may be required to submit completed forms and verification by a specified date for purposes of eligibility redetermination.~~

~~(c) Members must give notice of any change in total family income or family composition within 30 days of the change. Failure to give notice will be grounds for termination of eligibility until such time as complete and accurate income and family composition information is provided.~~

~~(d) Termination of eligibility, based upon a change in the federal poverty level, income or family composition, may not be effective earlier than 10 days after mailing of written notice of termination to the member.~~

~~(e) An individual is liable to the department and the department may collect from the individual the amount of actual payments by the department or its agents to providers for any services furnished to the individual because of misrepresentation of income or a failure to give the required notice of changes in income or family composition.~~

~~(9) A nonmember receiving covered emergency mental health services, which do not include hospital emergency room or other hospital services, is eligible on an emergency basis for the plan and may receive covered medically necessary services for a covered diagnosis unless the provider determines that the individual has the means, financially or otherwise, by which to make payment. If the individual is subsequently determined ineligible for the plan or fails to complete an application for plan eligibility within 60 days following completion of emergency treatment, the individual is liable for and may be billed by the provider at its usual and customary private pay charges or by the department for the amount of payments actually made by the department or its agents to the provider for the services provided.~~

~~(10) through (12)(d)(iii) remain the same but are renumbered (4) through (6)(d)(iii).~~

AUTH: Sec. 41-3-1103, 53-2-201, 53-6-113, 53-6-131, 53-6-

701 and 53-6-706, MCA

IMP: Sec. 41-3-1103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

46.20.114 [37.89.119] MENTAL HEALTH SERVICES PLAN, COVERED SERVICES (1) remains the same.

(2) Covered services include:

(a) through (c) remain the same.

(d) primary care providers, as defined in ARM ~~46.12.4801(18)~~ 37.86.5001(18), for screening and identifying psychiatric conditions and for medication management;

(e) and (f) remain the same.

(g) psychological assessments, treatment planning, individual, group and family therapy, and consultations performed by licensed psychologists, licensed clinical social workers, and licensed professional counselors for treatment of ~~specified~~ covered diagnoses in private practice or in mental health centers;

(h) through (5) remain the same.

(6) The plan covers the medically necessary psychotropic medications listed in the department's mental health services plan drug formulary if medically necessary with respect to a covered diagnosis. The department may revise the formulary from time to time and ~~will notify members of revisions to the formulary.~~ A copy of the current formulary may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(7) remains the same.

(a) The plan does not cover services defined as "nursing facility services" in ARM ~~46.12.1222~~ 37.40.302 or otherwise required by law to be provided by the nursing facility and does not cover or reimburse the nursing facility for services provided by the nursing facility.

(8) through (10) remain the same.

(a) The plan covers discharge planning services provided ~~by an intensive case manager employed by a mental health center in relation to a covered diagnosis prior to release from a correctional or detention facility for a member who is:~~

(i) within 60 days of release;

~~(i) (ii) a youth under the custody of the department's division of child and family services or the department of corrections and who is in a correctional or detention facility;~~

~~(ii) (iii) a member who is a prisoner in a correctional or detention facility;~~

~~(iii) (iv) a member who is a forensic patient, as specified in (7)(a), admitted to the Montana state hospital; or~~

~~(iv) (v) a member being held in a juvenile correction facility.~~

(b) through (11)(a)(ii) remain the same.

AUTH: Sec. 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131 and 53-6-706, MCA

IMP: Sec. 41-3-1103, 52-1-103, 53-1-405, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

46.20.117 [37.89.125] MENTAL HEALTH SERVICES PLAN, PROVIDER REIMBURSEMENT (1) through (a)(i) remain the same.

(b) For inpatient psychiatric services provided to a plan member in a residential treatment facility, the reimbursement rate shall be the medicaid rate provided in ~~ARM 46.12.596~~ 37.88.1106, less the amount of the educational component rate as established by the Montana office of public instruction. The educational component rate is available upon requests from the department's addictive and mental disorders division.

(c) For the room and board component of therapeutic youth group home and therapeutic youth family care, the rate is the lesser of:

~~(i) \$24.18 per patient day for moderate level therapeutic youth group home;~~

~~(ii) \$28.98 per patient day for intensive level therapeutic youth group home;~~

~~(iii) \$28.75 per patient day for campus based therapeutic youth group home; and~~

~~(iv) \$28.42 for all levels of therapeutic youth family care.~~

(i) the amount specified in the department's mental health services plan fee schedule; and

(ii) an amount of up to 25% less than the amount specified in the department fee schedule if the department determines that:

(A) the average per case cost of mental health service plan expenditures times the number of enrollees will exceed total appropriations; and

(B) there is no other means by which the department can reasonably reduce the cost of mental health services.

(d) If a child or adolescent is in the custody of the state of Montana, the room and board component of therapeutic youth group home and therapeutic youth family care will not be paid by the mental health services plan.

(e) If a child or adolescent is on a therapeutic home leave, the room and board component of therapeutic youth group home and therapeutic youth family care will not be paid by the mental health services plan.

(2) Provider claims for mental health services provided to members under the plan must be submitted to the department's medicaid management information system (MMIS) contractor according to requirements set forth in ~~ARM 46.12.303~~ 37.85.406. Payments will be made to the provider through the department's medicaid MMIS contractor.

(3) Providers must accept the amounts payable under this rule as payment in full for services provided to members. For purposes of this rule, the requirements of ~~ARM 46.12.303~~ 37.85.406 regarding payment in full apply to the provider, except as provided in this subchapter.

(a) remains the same.

(4) The provisions of ARM ~~46.12.304~~ 37.85.407 apply with respect to third party resources and seeking payment from these sources.

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

IMP: Sec. 53-1-601, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-701, 53-6-705 and 53-21-202, MCA

4. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
46.20.110	37.89.115	Mental Health Services Plan, Provider Participation
46.20.113	37.89.118	Mental Health Services Plan, Authorization Requirements
46.20.120	37.89.119	Mental Health Services Plan, Premium Payments, and Member Copayments
46.20.123	37.89.131	Mental Health Services Plan, Member Notice Grievance and Reconsideration Rights
46.20.126	37.89.135	Mental Health Services Plan, Transition from Rules in Effect Prior to July 1, 1999

5. In order to meet the deadline for program implementation following the termination of the contract for managed mental health care, the Department developed and implemented administrative rules within a brief time frame. Following July 1, 1999, the Addictive and Mental Disorders Division (AMDD) has been asked by other agencies, providers and stakeholders to provide continuing clarification of program requirements and expectations for the Medicaid Mental Health Program and the Mental Health Services Plan (MHSP). AMDD could not have fully anticipated the needs of providers and recipients as the public mental health system was transferred back to the state's oversight and control. These amendments are proposed in order to accommodate program changes that have been made to accommodate emerging needs and problems since adopting the rules June 30, 1999.

The Department is also transferring the rules in ARM Title 46 to ARM Title 37. As part of the Department's ongoing effort to consolidate, organize and clarify its rules, ARM 37.86.2206, 37.86.3005 and 46.20.106 were divided into several rules, including new rules I through XVII. Except as otherwise noted, the Department did not intend any substantive changes to those rules.

These amendments are proposed in part to address a substantial budgetary shortfall through limitation of future program costs so as not to exceed the legislative appropriation for the Medicaid Mental Health Program and the Mental Health Services Plan. The shortfall is currently projected at approximately \$40 million. Through the proposed amendments and two emergency rules, the Department is attempting to preserve the Mental Health Services Plan. Financial failure of the plan would jeopardize mental health treatment for the 3,000 adults and 1,000 children currently enrolled and receiving treatment under the plan. However, the complexity of the plan prevents the Department from predicting the number of persons these rules might affect.

ARM 37.86.105

This amendment would allow the Department to implement a policy adjustor to address problems of access to mental health services.

Access to mental health services in rural areas of Montana is frequently limited by inadequate provider resources. Community mental health centers (CMHCs) are often the only source for public mental health services in Montana's most remote communities. Certain CMHCs have indicated they will be forced to reduce or eliminate services in many small communities if additional reimbursement is not available to reduce the impact of costs associated with providing the services including travel time and expenses.

The Department finds that the ability to implement a policy adjustor for remote areas of the state would result in an improved service delivery system for eligible beneficiaries who would be able to access services within the local community instead of at great distance. Without the ability to apply a policy adjustor, it is unlikely that providers would be able to absorb the additional expenses associated with travel to rural areas of the state.

Medicaid and MHSP beneficiaries encounter lengthy delays in accessing some crucial provider types, especially psychiatrists, because of an inadequate number of practitioners who will serve public clients or because of limitations on the number of public clients participating providers are willing to accommodate. The most commonly cited reason for the extreme difficulty experienced by Medicaid and MHSP beneficiaries in obtaining psychiatric appointments is the low rate of reimbursement furnished by these programs. Mental health centers report that it costs more to support a psychiatrist than they can generate in reimbursement.

The ability to implement a policy adjustor will provide an incentive to those who are not currently enrolled and will encourage participating mental health centers to recruit

additional practitioners in order to meet the demand for specialized mental health services.

The alternative to this rule change would have been to do nothing. This alternative would give the Department no tools to respond to provider shortages and severe access problems for critical services and for rural locations. This alternative could result in people with serious mental illness not receiving necessary treatment and, eventually, being treated in a more intensive and more costly setting.

ARM 37.86.3001 and 37.86.3005

These amendments would require partial hospitalization programs to be co-located with a licensed hospital and to be an integrated part of the hospital psychiatric unit in order to be reimbursed by the Montana Medicaid program. The amendment deletes references to an outdated version of department policy. The amendment also deletes specific rates and provides for partial hospitalization rates to be published in a fee schedule. Finally, the amendment to ARM 37.86.3001 would specify that partial hospitalization services are provided only to individuals who have been determined to have either serious emotional disturbance or severe disabling mental illness as defined elsewhere in rule.

The amendment to ARM 37.86.3001 requiring partial hospitalization programs to be closely integrated with a licensed hospital is necessary to ensure that beneficiaries receiving partial hospitalization services benefit from the medical and support services available through hospitals. Partial hospitalization is an acute level of service, and requires substantial medical supervision and involvement. The Department does not believe that level of medical involvement is available in partial hospitalization programs that are remote from the hospital responsible for operation of the program.

The amendment to ARM 37.86.3001 that only those with serious emotional disturbance or severe disabling mental illness will meet medical necessity criteria for the service is necessary to ensure that intensive outpatient services are delivered under the Medicaid Mental Health Program and the Mental Health Services Plan only to those for whom they are intended. It will also ensure that public resources supporting this intensive level of service are expended on those most in need. It will ensure that providers and recipients of mental health services have a clear understanding of the acuity of mental illness that is appropriately treated in these services.

The amendment to ARM 37.86.3005 establishing a rate schedule is necessary to allow the Department to continue to reimburse partial hospitalization as a covered service under the Montana Medicaid program and the Mental Health Services Plan. The utilization and cost of the service has increased markedly in

recent months. Without the flexibility to quickly adjust reimbursement rates, the Department might be required to eliminate the service completely in order to contain costs.

The alternative to this amendment would be to make no change in the rule. This would seriously inhibit the Department's efforts to manage limited public resources. Without the proposed change, the Department would not be able to ensure that only those with appropriate therapeutic need and the potential to benefit from the specified services would receive them. Prior to formulating these changes in the partial hospitalization program, the Department actively contemplated elimination of the service. The proposed changes are intended to allow the continuation of the service through more exacting requirements that will result in fewer programs of higher intensity and quality which will serve only those who require the higher level of service.

It is unknown how many people might be affected by the proposed change. The Department anticipates that many beneficiaries currently in partial hospitalization programs would receive services in a day treatment program or in intensive day treatment. The annual savings to the Department is estimated to be \$480,000. The savings to the department for adjustment of the rate paid for partial hospitalization is estimated to be \$260,000 annually.

ARM 37.86.2801, 37.86.2206 and 37.88.1116

The Certificate of Need (CON) was introduced into the prior authorization process after adoption of the present rules June 30, 1999 to ensure communication between community providers and the utilization review contractor to certify that requested mental health services were appropriate for treatment of the covered diagnosis. The CON is required for authorization of partial hospitalization, residential treatment, therapeutic family care, therapeutic group care, adult foster care, and adult group care to ensure community services were considered prior to placement in a more restrictive setting. As originally defined, the individuals who were required to sign the CON were independent of the prospective provider of the service.

Soon after implementation the Department realized that this requirement created unintended barriers to service. The CON requires that those signing have knowledge of the beneficiary's psychiatric condition. This requirement presented a dilemma to treating professionals familiar with the individual: it was likely that the current treating physician would continue to treat at the requested level, but was prohibited by this rule from signing because of a professional relationship with the prospective provider.

The proposed amendments allow one of three signatures to be from a professional who may be associated with the facility

requesting authorization. A related change waives the requirement for independent professionals to sign the CON in cases where an individual is transferred from one level of care to another within the same facility (e.g., inpatient to partial hospitalization).

The Department recognizes that the professionals with the best knowledge of the recipient's mental health needs are likely those who have provided the most recent treatment. In order to ensure that the requested service is the least restrictive and most appropriate available, the Department has retained the requirement that requests for authorization be signed by an intensive case manager with knowledge of community alternatives available to the beneficiary.

As implemented on June 30, 1999 the administrative rules required that a CON must be furnished for recipients who were determined Medicaid eligible after admission to or discharge from a program. The Department finds the value of a requirement for a retrospective CON is minimal, and believes a retrospective clinical review of the medical necessity of the admission and of the treatment provided would be a more useful approach to utilization management in such cases. In the event of retroactive eligibility, the amended rules establish a requirement for timely notification and request for review to the Department's utilization review contractor.

The alternative to this rule change would be to do nothing. This alternative would leave in place a process that has proved to be unnecessarily burdensome to providers and of limited utility to the Department. The Department prefers to eliminate the impediments to moving recipients to a less restrictive, less expensive level of care.

ARM 37.86.2207, 37.88.1106, 37.88.907 and 46.20.117

The Department proposes deletion of specific citations of fees and the inclusion of language for all mental health providers in order to allow for rate adjustment when appropriate by an expedited process of rule amendment. The current fee schedules are available from the division as well as on the Department's web site, [www.dphhs@state.mt.us](http://www.dphhs@state.mt.us).

The Department has clarified that reimbursement is available to certain providers for reserving a bed while the recipient is temporarily absent if the absence is part of a therapeutic plan to transition the recipient to a lower level of care. The clarification would avoid paying reimbursement when a recipient is absent for social or recreational reasons. It has never been the policy of the Department to continue reimbursement for reasons other than therapeutic absences.

The Department proposes additional clarification that defines therapeutic leave by patient day rather than number of hours.



This change would make the therapeutic leave units (days) consistent with those used for billing and with the maximum (14 days) established in rule.

The alternative to the proposed rule change would be to do nothing. This alternative would have left AMDD at risk of paying for services not delivered and of no therapeutic value. Further, to do nothing would have preserved a confusing and inconsistent payment methodology.

ARM 37.88.901

The proposed amendment would establish the requirement that day treatment services are available only to those individuals with serious mental illness as defined elsewhere in rule.

This amendment is necessary to ensure that the intensive outpatient services are delivered under the Medicaid Mental Health Program and the Mental Health Services Plan only to those for whom they are intended and to ensure that public resources supporting this intensive level of service are expended on those most in need. It will guarantee that providers and recipients of mental health services have a clear understanding of the level of mental illness that is appropriately treated in this way.

The alternative would have been to make no change in the rule. This would have seriously hindered the Department's efforts to manage limited public resources. Without the proposed change, the Department would not have been able to ensure that the service would be received by the persons for whom it was intended.

It is unknown how many people might be affected by this change or what the fiscal impact to the Department would be.

The Department proposes amendment of the definition of child or adolescent to establish that the person cannot be over 20 years of age. The existing rule requires that a child or adolescent be enrolled in secondary school, but does not establish a maximum age.

The Department proposes a new mental health center service ("child and adolescent intensive day treatment") and has provided definition in the amended rules. This service will be available to children and adolescents with serious emotional disturbance who require more intensive treatment than can be provided within a day treatment program. The Department believes that many of the children and adolescents who are currently receiving services within a partial hospitalization program can appropriately be served in the less restrictive intensive day treatment setting. The standards for intensive day treatment were submitted to the Department by a committee of providers of intensive outpatient services. Intensive day

treatment programs will be approved by the Department in order to ensure that standards are consistently applied and that development of new programs does not occur beyond the Department's ability to support them with its allocated budget. In order to receive reimbursement, the service must be authorized as medically necessary by the Department's clinical review contractor prior to provision of the service.

The alternative to the proposed amendment would have been to not implement the new service. This would have resulted in an undetermined number of children and adolescents who are currently in partial hospitalization losing services if the amendment to ARM 37.86.3001 is adopted by the Department. The rate for this service has not yet been calculated and the financial impact is unknown.

This amendment clarifies that community based psychiatric rehabilitation and support services do not include services provided within a classroom setting that are educational in nature and more appropriately provided by a classroom teacher or teacher's aide.

This amendment provides a definition of "community mental health center" to be distinguished from mental health centers that are licensed under Title 50, chapter 5, part 2, MCA. The amendment is necessary to allow the Department the flexibility to establish differential rates for services provided by community mental health services. The amendment also allows the Department to identify those mental health centers which have increased responsibility and costs associated with the statutory requirements of 53-21-204, MCA and 53-21-201(1), MCA.

The Department has implemented a new mental health center service and has defined it in the amended rules. A program of assertive community treatment was developed to more effectively address the mental health needs of adults with severe disabling mental illness that have proven particularly difficult to treat in a community setting. As a billable mental health center service under both Medicaid and the Mental Health Services Plan, the program of assertive community treatment is an integrated program of community-based mental health services. The Department believes that by creating a bundle of services for the defined population, some individuals may be capable of achieving a level of independence that would have been otherwise unattainable. This service was initiated after July 1, 1999. The proposed rule amendments define this service, provide reference standards, describe appropriate recipients of the service, and require that providers notify the Department of their intent to develop and offer this service so that the Department can participate in and facilitate that development.

The alternative to the proposed rule change would be to do nothing. This alternative would have left the Department in the position of reimbursing a service that was not formally

established or defined. Alternatively, the Department would have been required to discontinue a service that has proven value in maintaining severely ill adults in the community and avoiding repeated inpatient hospitalizations.

The proposed amendment would discontinue reimbursement of school-based mental health services through the Montana Medicaid program and the Mental Health Services Plan and would delete all references to the service from rule. The elimination of school-based mental health services as a defined service is necessary to maintain the integrity of the public mental health program within appropriated funding levels, and to do so in a systematic, planned manner. This program shows strong indications that it will grow rapidly beyond the ability of the Department to support it through allocated funds. There has been no reduction of alternative, more expensive services to support the growth of school-based mental health services. The Department believes it is necessary to introduce a minimum level of accountability into mental health services delivered in schools.

Under the proposed amendment, Medicaid and MHSP recipients will be able to obtain necessary mental health services within the schools through an array of services that are reimbursed to mental health centers on a fee-for-service basis. School-based mental health services is a defined, comprehensive program for which a mental health center is currently paid a daily rate for each covered child receiving the service. However, the Department has no control over, or even knowledge of, the intensity or amount of services delivered, beyond the minimal standards established in rule. The Department requires greater accountability in order to be certain the public funds are being spent in the most effective manner consistent with the needs of the recipient.

The alternative to the proposed amendment is to either make no change, to significantly reduce the reimbursement for school-based services, or to restrict school-based mental health services in an arbitrary fashion. The first alternative would not have accomplished the Department's objectives and could eventually have resulted in the elimination of other services in order to maintain the mental health program within budget. The second alternative would likely have resulted in the de facto elimination of the service as providers found it financially impossible to continue the service. The third alternative is unacceptable because it would result in an inequitable service array across the state.

It is estimated that the proposed amendment will result in an annual savings of approximately \$108,000. The exact amount cannot be calculated because of anticipated program expansion in future school terms.

ARM 37.88.905

The amended rule would require that mental health center services be available to recipients continuously throughout the year. Some services available to Medicaid and MHSP beneficiaries are limited to providers who are licensed mental health centers. Eligible individuals must be able to receive necessary and appropriate services without interruption during summer months, weekends, or extended vacations. The Department considers the continuity of care to be an important variable in the support of overall wellness of enrolled and eligible beneficiaries.

Children and adolescents who receive mental health services within the school setting must also be able to access appropriate services throughout the remainder of the day, as well as days when school is not in session. The individualized treatment plan would identify and establish appropriate resources for the youth or family members to access if needed.

The alternative to this rule change would have been to do nothing. This alternative would have left mental health centers free to discontinue or interrupt services without restriction. To discontinue services for periods of up to three months would have likely resulted in loss of therapeutic gains made during the school year and has the very real potential for harm to the consumer.

ARM 37.86.3502 and 46.20.103

The proposed amendment modifies the definition of "severe disabling mental illness" to include a severity specifier of moderate or severe for the identified diagnosis. The amendment also requires that functional impairments be present for at least six months or can reasonably be expected to continue for six months.

The amendment eliminates eligibility that would be granted solely on imminent risk of suicide. Individuals under immediate risk of suicide may receive services through emergency eligibility for the Mental Health Services Plan and can receive subsequent assessment and evaluation to determine whether they suffer a severe disabling mental illness and qualify for eligibility for continuing services.

The amendments to ARM 37.86.3502 and 46.20.103(15) are necessary to identify those individuals most in need of mental health services and to ensure that intensive services delivered under the Medicaid Mental Health program and the Mental Health Services Plan are available to those with the most severe mental illness. It will ensure that providers and recipients of mental health services have a clear understanding of the level of mental illness that is appropriately treated in this manner.

The alternative to this amendment would have been to make no change in the rule. This would have seriously hindered the

Department's efforts to manage limited public resources. Without this change, the Department would not have been able to ensure that only the severely mentally ill would receive intensive services.

ARM 37.86.3702 and 46.20.103

The definition of "serious emotional disturbance" has been rewritten to replace the current rule. In recent months, the Department has received increasing comment from consultants and mental health professionals that the existing definition failed to identify children and adolescents with the most serious emotional disturbances. Because a disproportionate share of public resources are currently expended on children and adolescents, the Department researched the policies and practices of other states and consulted with licensed clinicians in the state to develop the proposed definition.

The proposed definition adds Autistic disorder (299.00). The following diagnoses are deleted: mood disorder not otherwise specified (296.90), psychotic disorder not otherwise specified (298.9), depressive disorder not otherwise specified (311), kleptomania (312.32), pyromania (312.33), trichotillomania (312.39), personality disorder (301.4, 301.5, 301.81), and conduct disorder (312.8). The diagnosis of attention deficit/hyperactivity disorder (314.00, 314.01, 314.9) must be accompanied by at least one of the other included diagnoses. Diagnoses must carry a severity specifier of moderate or severe.

In addition to the diagnostic criteria, a child or adolescent must demonstrate behavioral abnormality in at least two spheres or demonstrate a need for specialized services from at least one human service system in addition to mental health.

The proposed definition deletes the sections relating to suicide and special education that result in a determination of serious emotional disturbance without consideration of any other factors. A child would receive services under emergency programs if there is an imminent risk of suicide, and the special education factors are considered elsewhere in the definition.

Finally, the revised definition of serious emotional disturbance provides for separate criteria to be applied to children under six years of age.

The alternative to the proposed amendment would have been to do nothing. This would have seriously hindered the Department's efforts to manage limited public resources. Without this change, the Department would not have been able to identify those children and adolescents who, because of a mental illness, are in need of intensive services from Medicaid Mental Health or MHSP.

It is unknown how many people might be affected by this change or what the fiscal impact to the Department would be.

In Chapter 20, two references to the Mental Health Access Plan have been changed to the Mental Health Services Plan to correctly identify the program to which the rules apply. The Mental Health Access Plan was terminated on June 30, 1999.

ARM 46.20.103

The amendment replaces the former names of two youth correctional facilities with the current names to correctly identify them in rule.

The references to the federal poverty guidelines have been updated to reflect the Department will use the most current version. Allowance is made for reference to subsequent annual updates.

The alternative to this rule change would be to do nothing. This alternative would have perpetuated the potential for misunderstanding or mistakes in identifying correctional facilities or in determining eligibility for the MHSP.

ARM 46.20.106

The proposed amendment would require that an individual attaining 18 years of age receive a clinical evaluation to determine whether the individual meets the criteria for a severe disabling mental illness in order to establish clinical eligibility for MHSP as an adult. The clinical eligibility requirements for adolescents and adults differ, and although the MHSP requires a re-establishment of financial eligibility every year, the clinical eligibility is not necessarily re-evaluated. Clinical assessment prior to the 18th birthday would ensure that adolescents who will retain eligibility as adults can be provided services to transition to adult service providers, if appropriate.

The amendment also permits an adolescent who will not be eligible for mental health services as an adult with severe disabling mental illness, but who is eligible as an adolescent with serious emotional disturbance to continue to receive services as an adolescent until the 21st birthday. Services provided in the period between the 18th and 21st birthday must focus on transition to independent living for those who will no longer meet the clinical eligibility requirements.

To do nothing would have perpetuated a significant failure to address circumstances that will often allow: a) eligibility for MHSP to continue without appropriate assessment to determine need; or b) precipitously eliminate treatment for an adolescent with serious emotional disturbance without provision for the difficult transition to adult services or in much reduced

services to the adolescent.

The department proposes deletion of 46.20.106(8)(a) which contains provisions for the transfer of eligibility from the Mental Health Access Plan (MHAP) to MHSP. The transition from MHAP to MHSP is now complete, and the provisions in subsection (8)(a) are no longer necessary.

The earmarking in subsection (1) assumes that the department's emergency rule adopted in Montana Administrative Register, Issue No. 15 at page 2105 becomes permanent. The emergency rule requires children under the age of 19 to apply for and be denied eligibility under the Children's Health Insurance Program (CHIP) as a condition of eligibility for MHSP. Adoption of pending MAR Notice Number 37-167 proposed in Montana Administrative Register, Issue No. 16 at page 2202, would make the emergency rule permanent. In the event it is not adopted prior to the adoption of this proposed rule, subsection (1) will be renumbered accordingly.

The department proposes new subsection (1)(e) which refers to the limitations on enrollment adopted as (12) through (12)(d)(iii) by the department September 5, 2000 in the emergency rule adopted in Montana Administrative Register, Issue No. 18 at page 2529. Adoption of pending MAR Notice Number 37-172 proposed in Montana Administrative Register, Issue No. 18 at page 2510, would make the emergency rule permanent. In the event it is not adopted prior to the adoption of this proposed rule, subsection (1)(e) will be deleted from this rule.

ARM 46.20.114

The proposed amendment provides that a member who is incarcerated in a detention or correctional facility may receive discharge planning services provided by an intensive case manager 60 days prior to an anticipated release. The amendment to rule establishes when the discharge planning services may be initiated. This provision is necessary to ensure the member will have access to needed mental health treatment immediately upon release.

The alternative to the proposed rule change would be to do nothing. This alternative would limit the ability to plan for needed mental health services in advance of the individual's release and would frequently mean the individual would not receive necessary treatment in the community. There is clear potential for subsequent hospitalization or re-incarceration without the continuity of treatment that is facilitated by advance discharge planning.

ARM 46.20.117

The proposed amendment clarifies Department policy that the MHSP will not reimburse the room and board portion of therapeutic family care or therapeutic group care if the child or adolescent is in the custody of the state of Montana. This amendment also specifies that the MHSP will not reimburse room and board when the beneficiary is on therapeutic leave. The facility does not provide room and board services during such leave. The amendment puts into rule a long-standing practice.

The alternative to this rule change would have been to do nothing. This alternative would have continued to allow an inappropriate transfer of costs to the MHSP from other agencies which are appropriate payers of room and board. It would also have put AMDD at risk for paying for services that are not delivered.

ARM 37.86.2206, 37.86.3305 and [46.20.106]

For purposes of clarity and to expedite access to substantive provisions of the rules, ARM 37.86.2206, 37.86.3005 and [46.20.106] were reorganized and divided into new rules [Rule I] through [Rule XVII]. Except as specifically amended, no substantive change was intended.

Transfer of Title 46, Chapter 20

Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the public mental health system was transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services. In order to implement that legislation, the rules are being transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 89.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to 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 November 24, 2000. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.



7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State October 16, 2000.

BEFORE THE DEPARTMENT  
OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the Matter of the Proposed ) NOTICE OF PUBLIC HEARING  
Amendment of a Rule Pertaining) ON THE PROPOSED AMENDMENT  
to Refunds of Utility Customer) OF ARM 38.5.1108  
Deposits )

TO: All Concerned Persons

1. On November 29, 2000, at 10:00 a.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment of ARM 38.5.1108.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on November 22, 2000, to advise us of the nature of the accommodation that you need. Please contact Kathy Anderson, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618.

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

38.5.1108 REFUND OF DEPOSITS (1) Deposits plus accrued interest shall be refunded under the following circumstances and in the following form:

(a) ~~Satisfactory Payment~~: Where the customer requests the refund, and has for 12 consecutive months paid for service when due in a prompt and satisfactory manner as evidenced by the following:

(i) The utility has not initiated disconnection proceedings against the customer; and

(ii) No more than two notices of delinquency have been made to the customer by the utility.

(b) ~~Termination of Service~~: Upon termination of service the utility shall return to the customer the amount then on deposit plus accrued interest less any amounts due the utility by the customer for service rendered.

(c) ~~Refunds—How Made~~: Any deposit, plus accrued interest, shall be refunded to the customer in the form of a check issued and mailed to the customer no more than 30 days following the termination of service or completion of 12 months satisfactory payment as described above. ~~In the alternative, the deposit may be applied to the customer's bill of service in the thirteenth and, if appropriate, subsequent months, in accordance with the preference as to form of refund indicated by the customer.~~

AUTH: 69-3-103, MCA  
IMP: 69-3-103, MCA, 1975 HJR 27

4. The Montana Consumer Counsel has petitioned for this rulemaking. The PSC grants the petition and initiates this proceeding for purposes of receiving public comment. The rule appears reasonably necessary to make the approach to refunds uniform and to require prompt refunds of deposits without customer request. Based on public comments submitted on this proposed amendment, if any, and based on the PSC's own evaluation of the matter, the rule may be amended accordingly.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than November 29, 2000, or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.state.mt.us/PublicComment/PublicComment.htm> no later than November 29, 2000. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-00.9.5-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; or administrative procedures. Such written request may be mailed or delivered to Rhonda Simmons, Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Rhonda Simmons at 406-444-7618, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Dave Fisher  
Dave Fisher, Chairman

/s/ Robin A. McHugh  
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 16, 2000.

BEFORE THE DEPARTMENT  
OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the Matter of Proposed )  
Amendments to Rules Pertaining) NOTICE OF PUBLIC HEARING  
to Pipeline Safety ) ON THE PROPOSED AMENDMENT  
) OF ARM 38.5.2202 AND  
) 38.5.2302

TO: All Concerned Persons

1. On November 29, 2000, at 9:00 a.m. a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment of ARM 38.5.2202 and 38.5.2302.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on November 22, 2000, to advise us of the nature of the accommodation that you need. Please contact Kathy Anderson, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission hereby adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before ~~October 26, 1999~~ October 26, 2000. A copy of the referenced regulations may be obtained from DOT, Research and Special Programs Administration, Western Region, Pipeline Safety, 12600 W. Colfax Ave., Suite A-250, Lakewood, Colorado 80215-3736, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA  
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter the commission hereby adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before ~~October 26, 1999~~ October 26, 2000. A copy of the referenced CFR's is available from the DOT, Research and Special Programs Administration, Western Region, Pipeline Safety, 12600

W. Colfax Ave., Suite A-250, Lakewood, Colorado 80215-3736, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA  
IMP: 69-3-207, MCA

4. Amendments (annual updates) of the rules are necessary to allow the PSC to properly administer the most current version of federal rules applicable in the PSC's administration of all federal aspects of Montana's pipeline safety programs.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than November 29, 2000, or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.state.mt.us/PublicComment/PublicComment.htm> no later than November 29, 2000. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-00.9.6-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Rhonda Simmons, Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Rhonda Simmons at 406-444-7618, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Dave Fisher  
Dave Fisher, Chairman

/s/ Robin A. McHugh  
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 16, 2000.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
proposed amendment of ARM	)	ON PROPOSED AMENDMENT OF
1.2.419 regarding scheduled	)	ARM 1.2.419 FILING,
dates for the Montana	)	COMPILING, PRINTER PICKUP
Administrative Register	)	AND PUBLICATION OF THE
	)	MONTANA ADMINISTRATIVE
	)	REGISTER

TO: All Concerned Persons

1. On November 16, 2000, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Annex Conference Room at 1236 Sixth Avenue, Helena, Montana, to consider the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register.

2. The Secretary of State 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 request an accommodation, contact the Secretary of State no later than 5:00 p.m. on November 6, 2000, to advise us of the nature of the accommodation that you need. Please contact Kathy Lubke, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2055; FAX (406) 444-5833; e-mail klubke@state.mt.us.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

20002001 Schedule

<u>Filing</u>	<u>Compiling</u>	<u>Printer Pickup</u>	<u>Publication</u>
January <del>3</del> <u>2</u> January <del>14</del> <u>12</u>	January <del>4</del> <u>3</u> January <del>18</del> <u>16</u>	January <del>5</del> <u>4</u> January <del>19</del> <u>17</u>	January <del>13</del> <u>11</u> January <del>27</del> <u>25</u>
January <del>31</del> <u>29</u>	February <del>1</del> <u>January 30</u>	February <del>2</del> <u>January 31</u>	February <del>10</del> <u>8</u>
February <del>14</del> <u>12</u>	February <del>15</del> <u>13</u>	February <del>16</del> <u>14</u>	February <del>24</del> <u>22</u>
March <del>6</del> <u>February 26</u>	March <del>7</del> <u>February 27</u>	March <del>8</del> <u>February 28</u>	March <del>16</del> <u>March 8</u>



<del>March 2012</del> <del>April 3</del> <u>March 26</u>	<del>March 2113</del> <del>April 4</del> <u>March 27</u>	<del>March 2214</del> <del>April 5</del> <u>March 28</u>	<del>March 3022</del> <del>April 13</del> <u>April 5</u>
<del>April 1716</del> <del>May 1 April 30</del> <del>May 1514</del> <del>June 5 May 29</del> <u>June 1911</u>	<del>April 1817</del> <del>May 21</del> <del>May 1615</del> <del>June 6 May 30</del> <u>June 2012</u>	<del>April 1918</del> <del>May 32</del> <del>May 1716</del> <del>June 7 May 31</del> <u>June 2113</u>	<del>April 2726</del> <del>May 1110</del> <del>May 2524</del> <del>June 157</del> <u>June 2921</u>
<del>July 3 June 25</del> <del>July 179</del>	<del>July 5 June 26</del> <del>July 1810</del>	<del>July 6 June 27</del> <del>July 1911</del>	<del>July 135</del> <del>July 2719</del>
<del>July 3130</del>	<del>August 1</del> <u>July 31</u>	<del>August 21</del>	<del>August 109</del>
<del>August 1413</del> <del>August 2827</del> <del>September 1110</del>	<del>August 1514</del> <del>August 2928</del> <del>September 1211</del>	<del>August 1615</del> <del>August 3029</del> <del>September 1312</del>	<del>August 2423</del> <del>September 76</del> <del>September 2120</del>
<del>September 25</del> <u>October 1</u>	<del>September 26</del> <u>October 2</u>	<del>September 27</del> <u>October 3</u>	<del>October 511</del>
<del>October 1615</del>	<del>October 1716</del>	<del>October 1817</del>	<del>October 2625</del>
<del>October 3029</del>	<del>October 3130</del>	<del>November 1</del> <u>October 31</u>	<del>November 98</del>
<del>November 139</del> <del>November 2726</del> <del>December 1110</del>	<del>November 1413</del> <del>November 2827</del> <del>December 1211</del>	<del>November 1514</del> <del>November 2928</del> <del>December 1312</del>	<del>November 2221</del> <del>December 76</del> <del>December 2120</del>

(2) All material to be published must be submitted by 12:00 p.m. noon on the scheduled filing date. All material submitted after the scheduled filing deadline will not be published until the next scheduled publication date.

~~(3) In the event of "Y2K" (year 2000) computer problems, the secretary of state reserves the right to modify the January schedule. After consultation with agencies that submit information for the issue number one filing, this issue may be postponed or combined with issue number two if computer breakdowns or other serious technical problems are experienced.~~

AUTH: Sec. 2-4-312, MCA IMP, Sec. 2-4-312, MCA

4. The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 2001. The word noon is being substituted for p.m. for clarification purposes. Section (3) is being deleted because the precautions taken for "Y2K" (year 2000) computer problems are no longer relevant.

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 Kathy Lubke, Administrative Rules Bureau, Secretary of State's Office, 1236 Sixth Avenue, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing klubke@state.mt.us, and must be received no later than November 24, 2000.

6. Kathy Lubke, address given in paragraph 5 above, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, e-mailed to klubke@state.mt.us, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Mike Cooney

MIKE COONEY  
Secretary of State

Reviewed by:

/s/ Daniel J. Whyte

DANIEL J. WHYTE  
Rule Reviewer

Dated this 16th day of October 2000

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF  
of ARM 2.5.502 concerning state ) AMENDMENT  
procurement )  
)  
)  
)

TO: All Concerned Persons

1. On August 10, 2000, the Department of Administration published notice of the proposed amendment of ARM 2.5.502 concerning state procurement at page 2092, 2000 Montana Administrative Register, issue number 15.

2. The Department has amended ARM 2.5.502 as proposed, but with the following change:

2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY

(1) and (2) remain the same.

(3) The preferred types of security are bonds as described in 18-4-312(3)(a) and cash as described in 18-4-312(3)(c) and (d), MCA. The security must be payable to the state of Montana and the contract performance security must remain in effect for the entire contract period.

(a) through (c) remain the same.

(d) Certificates of deposit or money market certificates will not be accepted as security for bid, proposal, or contract security unless the certificates are assigned only to the state. All interest income from these certificates would must accrue only to the contractor and not the state.

3. After reviewing the proposed rule amendment, the department decided to change the word "would" to "must" concerning the accrual of interest income for clarity purposes. The Department accepted written comments through September 9, 2000. No written or oral comments were received.

/s/ Dave Ashley  
Dave Ashley, Acting Director

/s/ Dal Smilie  
Dal Smilie, Rule Reviewer

Certified to the Secretary of State October 16, 2000.

CHEMICAL DEPENDENCY COUNSELORS CERTIFICATION PROGRAM  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of rules pertaining to )  
education, verification of )  
supervised counseling )  
experience, application )  
procedures, written examinations,)  
counselors certified in other )  
states, renewals and continuing )  
education )

TO: All Concerned Persons

1. On September 7, 2000, the Chemical Dependency Counselors Certification Program published a notice of the proposed amendment of the above-stated rules at page 2344, 2000 Montana Administrative Register, issue number 17. The hearing was held October 6, 2000.

2. The Program has amended ARM 8.11.106, 8.11.108, 8.11.110, 8.11.112, 8.11.115 and 8.11.118 exactly as proposed.

3. The Program has amended ARM 8.11.114 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.11.114 COUNSELORS CERTIFIED IN OTHER STATES

(1) through (5) same as proposed.

(6) This certification by exam shall be available to applicants for a period of ~~one~~ two years from [the effective date of the rule adoption]. All applicants after that date must apply for certification according to the requirements of the current statutes and rules.

4. The Program received two written comments. The comments received and the Chemical Dependency Program council's response are as follows:

COMMENTS NO. 1 and 2: Two commentors recommended that in connection with the proposed amendments to ARM 8.11.114 the availability of certification by exam be extended to two years.

RESPONSE: The Chemical Dependency Program council reviewed the comments and agreed that the availability of certification by exam be extended to two years. The additional time will allow more applicants to participate, additional time to advertise the change and will allow the program more time to make paperwork adjustments.

CHEMICAL DEPENDENCY COUNSELOR  
CERTIFICATION PROGRAM  
STEPHEN MELOY, DIVISION  
ADMINISTRATOR

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, October 16, 2000.

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

In the matter of the amendment ) NOTICE OF AMENDMENT  
of a rule pertaining to )  
temporary approval )

TO: All Concerned Persons

1. On June 15, 2000, the Board of Medical Examiners published a notice of the proposed amendment of the above-stated rule at page 1385, 2000 Montana Administrative Register, issue number 11. The hearing was held July 12, 2000.

2. The Board has amended ARM 8.28.1508 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.28.1508 TEMPORARY APPROVAL (1) through (5) same as proposed.

(6) The effective date of the amendments to this rule will be January 1, 2002.

3. The Board received 42 written comments and nine people testified at the hearing. (Some of the people testifying also submitted written comments.) The comments received and the Board's response are as follows:

COMMENTS NO. 1-24: Twenty-four commentors expressed that the rule change will present a barrier to physician assistant (PA) practice in Montana, that it is unfair to PA students, that it presents a tremendous obstacle to health care access, that 47 states permit practice between graduation and certification, and that direct supervision of PA's ensures public safety and protection.

COMMENTS NO. 25-33: Nine commentors stressed the need of under-served and rural areas in Montana (with more than one opponent emphasizing that the rule change will discourage PA's from coming into Montana to practice because of the time lapse between graduation and certification).

COMMENTS NO. 34-39: Five commentors stated their objection because some skills may be lost and the financial burden will be placed on the PA during the time between graduation and certification. (One of the five commentors overlaps with one of the prior nine commentors.)

COMMENTS NO. 40 and 41: Two commentors stated that they were not aware of any past problems with new graduates and temporary licensure which would warrant a change in the rule.

COMMENTS NO. 42-44: Three commentors supported the change with regard to remote site supervision.

COMMENT NO. 45: One commentor commented that PA's are capable and responsible upon completion of the PA program.

COMMENT NO. 46: One commentor objected stating that the rule change would place a burden on the physicians who intend to hire her upon graduation, that "all other health care professionals may practice pending receipt of their examination results", that the six-month hiatus will degrade skills, and that the change effectively eliminates the temporary license.

COMMENT NO. 47: One commentor stated that the rule change may cause PA's to lose jobs to nurse practitioners and will delay the time and experience required for remote site location.

RESPONSE: The Board's response to all commentors is that the rule changes are necessary to ensure that each license applicant has attained the minimum level of competence to practice as a physician assistant-certified in the state of Montana. The Board stated that it is difficult or impossible to assess the qualifications of an applicant in the absence of successful completion of the national examination. All other health care professionals regulated by the Board must pass an examination prior to licensure. The Board further stated that concerns for public safety and protection take precedence over financial hardship to students, the possibility that certain skills may be lost or allegations of obstacles to health care access. Finally, the Board specifically addressed concerns of present PA students by amending the proposed rule to provide that the effective date of implementation will be January 1, 2002.

BOARD OF MEDICAL EXAMINERS  
LAWRENCE R. McEVOY, M.D.  
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, October 16, 2000.

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

In the matter of the adoption ) NOTICE OF ADOPTION  
of rules pertaining to )  
telemedicine )

TO: All Concerned Persons

1. On July 27, 2000, the Board of Medical Examiners published a notice of the proposed adoption of rules at page 1826, 2000 Montana Administrative Register, issue number 14. The hearing was held August 23, 2000.

2. The Board has adopted NEW RULE I (8.28.1901) PURPOSE AND AUTHORITY, NEW RULE II (8.28.1902) DEFINITIONS, NEW RULE III (8.28.1903) LICENSE REQUIREMENT, NEW RULE IV (8.28.1904) APPLICATION FOR A TELEMEDICINE CERTIFICATE, NEW RULE V (8.28.1905) FEES, NEW RULE VI (8.28.1906) FAILURE TO SUBMIT FEES, NEW RULE VII (8.28.1907) ISSUANCE OF TELEMEDICINE CERTIFICATE, NEW RULE VIII (8.28.1908) CERTIFICATE RENEWAL APPLICATION, NEW RULE IX (8.28.1909) EFFECT OF DENIAL OF APPLICATION FOR TELEMEDICINE CERTIFICATE, NEW RULE X (8.28.1910) EFFECT OF TELELMEDICINE CERTIFICATE AND NEW RULE XI (8.28.1911) SANCTIONS exactly as proposed.

3. The Board received one comment at the hearing. The comment received and the Board's response are as follows:

COMMENT NO. 1: One commentor stated that the term "licensee" should be changed to "certificate holder" and that the term "license" should be changed to "certificate" as he felt that the words "license" or "licensee" were inappropriate because they were licensed in another state. The commentor further felt that New Rule I regarding purpose and authority and the definitions of "practice of telemedicine", "exemptions to practice" and "the board of medical examiners" duplicated language in statute. The commentor further felt that the language in New Rule III allowing a person to practice telemedicine if they have a full unrestricted current license was inappropriate.

RESPONSE: After discussion and receipt of further comment, the Board determined to submit the proposed rules for filing with the Secretary of State as written. Specifically, the Board declined to change the terms "licensee" to "certificate holder" and "license requirement" to "certificate requirement" as the terms "licensee" and "license requirement" are clearly contemplated by Section 37-3-341, MCA ("physicians outside of the boundaries of Montana who enter the state by electronic or other technological means to practice medicine. . . are subject to the licensure and regulatory requirements provided in 37-3-341 through 37-3-349.")



The Board declined to delete the statement of purpose and authority as the statement serves to connect the rules to the statute establishing regulatory authority over the practice of telemedicine across state lines. The Board further declined to delete the terms "practice of telemedicine", "exemptions to practice", and "the board of medical examiners" under the definitions section of the proposed rule as they are included for the purpose of ease in reading the remaining rules.

The Board declined to eliminate "full, unrestricted current license", clarifying its intent that a person who engages in the practice of telemedicine in this state shall hold either a telemedicine certificate or a full, unrestricted and current license.

BOARD OF MEDICAL EXAMINERS  
LAWRENCE R. McEVOY, M.D.  
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, October 16, 2000.

BEFORE THE BOARD OF INVESTMENTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the repeal of ) NOTICE OF THE REPEAL OF  
rules pertaining to the INTERCAP ) RULES PERTAINING TO THE  
Program ) INTERCAP PROGRAM

TO: All Concerned Persons

1. On August 24, 2000, the Board of Investments published a notice of proposed repeal of rules at page 2142, 2000 Montana Administrative Register, issue number 16. The hearing was held September 28, 2000.

2. The Board has repealed ARM 8.97.910, 8.97.911, 8.97.912, 8.97.913, 8.97.914, 8.97.915, 8.97.916, 8.97.917, 8.97.918, 8.97.919 and 8.97.920, exactly as proposed.

3. No comments or testimony were received.

BOARD OF INVESTMENTS

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, October 16, 2000

BEFORE THE ECONOMIC DEVELOPMENT DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the adoption of ) NOTICE OF ADOPTION OF RULES  
rules pertaining to the Montana ) PERTAINING TO THE MONTANA  
board of research and commercia- ) BOARD OF RESEARCH AND  
lization technology ) COMMERCIALIZATION TECHNOLOGY

TO: All Concerned Persons

1. On May 11, 2000, the Economic Development Division published a notice of the proposed adoption of rules pertaining to the Montana board of research and commercialization technology at page 1138, 2000 Montana Administrative Register, issue number 9. The hearing was held June 15, 2000.

2. The Division has adopted Rule I (8.100.101), Rule II (8.100.102), Rule III (8.100.103), Rule IX (8.100.108), Rule XII (8.100.111) and Rule XIII (8.100.112) exactly as proposed. The Division is not adopting Rule VI. The Division has adopted Rule IV (8.100.104), Rule V (8.100.105), Rule VII (8.100.106), Rule VIII (8.100.107), Rule X (8.100.109), and Rule XI (8.100.110) as proposed but with the following changes: (authority and implementing sections will remain the same as proposed)

8.100.104 DEFINITIONS The following definitions shall apply for the purposes of these rules.

(1) and (2) will remain the same as proposed.

(3) "Research and commercialization project" means a project eligible for funding under the criteria set forth under 90-3-1003(4), MCA, to be conducted at a "research and commercialization center" as set forth under 90-3-1001(2), MCA.

8.100.105 APPLICATION PROCEDURES FOR A RESEARCH AND COMMERCIALIZATION GRANT OR LOAN - SUBMISSION AND EVALUATION OF EXECUTIVE SUMMARY AND PROJECT PROPOSAL

(1) An applicant application for a research and commercialization grant or loan must submit contain a written executive summary and project proposal of the project. The application must be submitted to the board's staff. The executive summary must contain the following items:

(a) a description summary of the proposed project, including a description of any new the products or processes that might be developed and the technology involved;

(b) an description explanation of how the project meets each of the statutory project criteria set forth in 90-3-1003(4)(a) through (i), MCA;

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

(h) an indication of whether or not an external peer review has been conducted.

(2) The executive summary should not contain any information that the applicant does not want subject to public inspection, subject to constitutional limitations, and determinations of by the department and as to whether the information is proprietary.

~~(3) Board staff will evaluate the executive summary and make a recommendation to the board. The board will determine whether the project should be advanced to the research and commercialization proposal stage.~~ The research and commercialization project proposal must contain the following items:

(a) a title page;

(b) a table of contents;

(c) a project description containing the following items:

(i) the proposal objectives;

(ii) a background review of the technology;

(iii) the project design;

(iv) the results of external peer review if any;

(v) a list of required facilities and equipment;

(vi) a list of performance benchmarks with target dates;

(vii) an itemized budget and use of proceeds, with documentation showing source of funds and use of proceeds for each line of the budget; and

(viii) the resumes of the major principals identified in the project design describing the education and employment experience of each.

(d) a commercialization plan that includes a product description, a description of the targeted market including its size, marketing the product, product pricing considerations, a manufacturing or production plan and a business risk assessment.

8.100.106 APPLICATION PROCEDURES FOR A RESEARCH AND COMMERCIALIZATION GRANT OR LOAN - EVALUATION AND REVIEW PROCESS

~~(1) After receipt of the research and commercialization proposal application, the board's staff will determine whether it is complete. Once the research and commercialization proposal application is deemed complete, the board will begin to evaluate and review the proposal.~~

~~(2) If the research and commercialization proposal application submitted is for a grant, external peer review is mandatory. The board may accept the results of the competitive peer review process conducted by a federal or private granting agency. However, the board may seek additional peer review if deemed necessary.~~

~~(3) Staff review of the research and commercialization proposal application will verify compliance with the statutory purpose and criteria, and may address other issues as determined by the board. feasibility of the technology involved (based on a peer review), the credibility and expertise of the project principals and the potential for the successful completion of the project. The staff will provide~~

a summary of the evaluation and review to the board.

(4) The board may ask the applicant to make a presentation of the ~~research and commercialization proposal application~~ at a board meeting.

8.100.107 APPLICATION PROCEDURES FOR A RESEARCH AND COMMERCIALIZATION GRANT OR LOAN - BOARD ACTION (1) In its decision to fund or to deny funding of an ~~research and commercialization proposal application~~, the board will take into consideration the number of, and the degree to which statutory criteria are met. In addition, the board will take into consideration the stated statutory purpose, and the goals and objectives of the proposal, ~~of the research and commercialization program~~, the applicant's presentation and the staff report. Based on these factors, the board may vote to:

- (a) make the grant or loan ~~in to~~ the research and commercialization project as requested;
- (b) make the grant or loan ~~in to~~ the research and commercialization project provided certain conditions are met;
- (c) make the grant or loan in to the research and commercialization project for a larger or smaller amount than requested;
- (d) refer the ~~research and commercialization proposal application~~ back to the applicant for revisions; or
- (e) reject the ~~research and commercialization proposal application~~.

(2) In the case where the board is satisfied with the quality of the ~~research and commercialization proposal application~~ but the required external peer review has not been conducted, the board may fund its own external peer review of the ~~research and commercialization proposal application~~. Upon completion of external peer review, the ~~research and commercialization proposal application~~ will be returned to staff for completion of the evaluation and review process.

8.100.109 RECONSIDERATION OF FUNDING DECISION - ALL RESEARCH AND COMMERCIALIZATION PROPOSALS (1) If the board determines that an ~~research and commercialization executive summary and project~~ proposal is ineligible for a grant or loan due to failure to comply with applicable statutory criteria and other criteria, the applicant has 30 days from the date of notification of such determination to request the board to reconsider the ~~research and commercialization executive summary and project~~ proposal or to determine whether the determination should stand or should be modified. The request for reconsideration must be in writing and addressed to the Montana Department of Commerce, Montana Board of Research and Commercialization Technology, 1424 Ninth Avenue, Helena, Montana 59620.

8.100.110 FAILURE TO PRODUCE IN MONTANA - ALL RESEARCH AND COMMERCIALIZATION GRANTS AND LOANS (1) A grant or loan recipient must agree to use its best efforts to see ensure

that the development or commercialization of new technology occurs within the state of Montana.

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

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

COMMENT NO. 1: The Montana University System, through its representative, Ron Sundsted, Associate Commissioner for Fiscal Affairs, commented that the proposed time line for proposal submissions was unwieldy and excessively long. The Montana University System suggests board approval in a single meeting.

RESPONSE: The board concurs and finds that the executive summary and the research and commercialization proposal and all materials must be submitted at the same time. The board also finds that a brief commercialization plan, as a part of the research and commercialization proposal, will be necessary for the board's ability to make a funding decision at one meeting. Accordingly, ARM 8.100.105 and 8.100.106 are amended as set forth above.

COMMENT NO. 2: The Montana University System commented that staff review should be limited to a preliminary review only to determine compliance with administrative requirements, such as whether the application includes each of the items listed in ARM 8.100.106(a) through (m). If these requirements are met, the proposal should be forwarded to the board and acted upon in one meeting.

RESPONSE: The board finds that staff review will assist the board in making a determination to fund the project and that particular information provided by staff may vary from project to project. Consequently, the board amends ARM 8.100.106(3) as set forth above.

COMMENT NO. 3: The Montana University System commented that the board should always accept the results of a federal agency peer review.

RESPONSE: Section 90-3-1003(6), MCA, requires peer review of grant proposal. The board finds that whether or not it will accept the results of federal agency peer review is a matter of the board's discretion.

COMMENT NO. 4: The Montana University System suggests comments that ARM 8.100.104(2) be expanded to read: "Research and commercialization project" means a project eligible for funding under the criteria set forth under 90-3-1003(4), MCA, be conducted at a "research and commercialization center" as set forth under 90-3-1001(2), MCA.

RESPONSE: The board concurs and amends the rule, although the board finds it should apply to ARM 8.100.104(3), not ARM 8.100.104(2).

ECONOMIC DEVELOPMENT DIVISION

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, October 16, 2000

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

In the matter of the )  
adoption of new rules in )  
the western fishing )  
district limiting )  
watercraft to no wake )  
speed for lakes less than )  
35 acres and instituting )  
a no wake zone contiguous )  
to the shoreline on lakes )  
greater than 35 acres )

NOTICE OF ADOPTION

TO: All Concerned Persons

1. On July 13, 2000, the Fish, Wildlife and Parks Commission (commission) published notice of the proposed adoption of new Rule I through new Rule V at page 1728 of the 2000 Montana Administrative Register, Issue Number 13.

2. The commission has adopted new Rules I through III (12.11.101, 12.11.106, 12.11.110) exactly as proposed. The commission has adopted new Rules IV (12.11.115) and V (12.11.117) with the following changes:

NEW RULE IV NO WAKE ZONES FOR LAKES GREATER THAN 35 ACRES IN THE WESTERN FISHING DISTRICT (1) This rule applies to any public lake or reservoir in the western fishing district greater than 35 acres and therefore not regulated in [NEW RULE III].

(2) All watercraft on public lakes or reservoirs greater than 35 surface acres within the western fishing district are limited to a controlled no wake speed as defined in [NEW RULE I] from shoreline to 200 feet from the shoreline. The following are exceptions under this rule:

(a) personal watercraft which must maintain a certain minimum operating speed to remain upright and maneuver in the water may travel at that minimum operating speed following the most direct route through the no wake zone to and from shore;

(b) motorized watercraft towing a water skier from or to a dock or the shore, except watercraft falling under this exception must travel the most direct route through the no wake zone to and from the dock or shore;

(c) Crystal Lake located within the Thompson Chain of Lakes, Lincoln County;

(d) Horseshoe Lake located within the Thompson Chain of Lakes, Lincoln County;

(e) Loon Lake located within the Thompson Chain of Lakes, Lincoln County;

(f) Lower Thompson Lake located within the Thompson Chain of Lakes, Lincoln County;

(g) McGregor Lake located within the Thompson Chain of Lakes, Lincoln County;



(h) Middle Thompson Lake located within the Thompson Chain of Lakes, Lincoln County; and

(i) Upper lobe of Upper Thompson Lake located within the Thompson Chain of Lakes, Lincoln County.

(3) Any more specific regulations adopted by the commission pertaining to bodies of water affected by this rule are controlling.

(4) This rule is effective May 15, 2001.

AUTH: 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-106, 23-2-501, 87-1-303, MCA

NEW RULE V PROCEDURE FOR CHANGING WATER SAFETY RESTRICTIONS

(1) Except when emergency situations arise as defined in 2-4-303, MCA ~~water safety rules~~ recreational water use rules [NEW RULE I, II, III, IV and V] shall be reviewed annually for consideration of any changes through the repeal, amendment, or adoption of new rules. Any individual or entity requesting new ~~water safety regulation or changes to an existing water safety~~ ARM 12.11.101, 12.11.106, 12.11.110, 12.11.115 and 12.11.117 regulation shall postmark or hand deliver their written request and petition to the commission secretary no later than September 30.

(2) An individual or entity may petition the commission to remove or amend the ~~no wake change restrictions or other water safety regulations~~ on a body of water affected by ARM 12.11.110 and 12.11.115 by doing the following:

(a) completing a petition requesting the change on forms provided by the department or by using sample form 3 found in the Administrative Rules of Montana, Title 1, chapter 3, Model Rules; and

(b) submitting to the commission secretary, no earlier than August 1 and no later than September 30 of each year, the petition referred to in (a) with a written request to have the proposed rule change included on the commission agenda.

(3) The commission may remove, amend, or adopt restrictions on the body of water specified by the petition.

(4) The department and commission recognize that under 2-4-315, MCA, a response to a rulemaking petition must be made within 60 days after submission of a petition by initiating rulemaking proceedings or denying the petition. This rule constitutes the manner in which the commission will respond to petitions for rulemaking regarding ARM 12.11.101, 12.11.106, 12.11.110, 12.11.115 and 12.11.117:

(a) except when emergency situations arise as defined in 2-4-303, MCA, the commission will respond to all ~~water safety rulemaking petitions~~ regarding ARM 12.11.101, 12.11.106, 12.11.110, 12.11.115 and 12.11.117 received on or after August 1 or on or before September 30 by beginning rulemaking proceedings or issuing a written denial of the petition; and

(b) except when emergency situations arise as defined in 2-4-303, MCA, the commission will respond to all ~~water safety rulemaking petitions~~ regarding ARM 12.11.101, 12.11.106, 12.11.110, 12.11.115 and 12.11.117 received before August 1 or

after September 30 by issuing a written denial but informing the petitioner that the issue will be placed on the commission agenda for discussion at the next commission meeting. If the commission deems it appropriate, rulemaking on the issue may begin after September 30.

AUTH: 23-1-106, 87-1-301, 87-1-303, MCA  
IMP: 23-1-106, 23-2-501, 87-1-303, MCA

3. The commission received 224 comments supporting one or all of the new rules and 124 comments opposing one or all of the new rules. A number of the comments received offered alternative recommendations to the proposed rules. Based on public input, such as the scoping meetings where numerous citizens expressed their support of the type of rules being adopted in this rulemaking, the commission determined that these new rules would best serve the diverse interests of recreationists using state waters. It is the desire of the commission to keep these rules in place over a period of time in order to later evaluate if these rules achieve the commission's objectives of recreational conflict resolution, safety, wildlife protection, and resource preservation. While many individuals supported the new rules, a summary of the negative comments or comments requesting changes to the rules appears below:

COMMENT 1: Several individuals commented that the 200 ft. no wake restriction on lakes greater than 35 acres would concentrate boating traffic in the middle of the lake, creating a hazardous situation.

RESPONSE: It is with safety in mind that this recommendation has been made. Many of the activities that take place near shore are activities like swimming, fishing from shore or dock, and operation of manually powered vessels. The commission's objective in adopting this rule is to slow down the vessels in close to shore and protect the safety of individuals engaging in near-shore activities while not adversely affecting the concentrations in the middle of the lakes.

COMMENT 2: A few individuals stated that they objected to "blanket" rules that apply to waters generally and believed that recreational conflicts should be dealt with on a case-by-case basis.

RESPONSE: The new rules respond to requests from many Montana citizens to resolve recreational water conflicts. The commission proposed these rules as "blanket rules" to insure that the public had clear and consistent rules under which to recreate. Case-by-case regulations have been adopted in the past by the commission on certain rivers and lakes such as Thompson Chain of Lakes. Case-by-case regulations will remain in effect in addition to the new rules. New Rule V addresses the need that may arise in the future to establish more site-specific regulations, and it establishes a mechanism for the

public to petition the commission for those site-specific needs.

COMMENT 3: A large number of individuals and three organizations said that the proposed regulations should be much more restrictive. Some stated that these regulations were merely a very small start for what needs to be done. They believed the commission should add one or more the following to the restrictions:

- ban all personal watercraft (PWCs)
- ban PWCs on lakes less than 1000 acres
- ban all two stroke engines
- ban all motorized watercraft on all but a few large lakes
- enlarge the no wake zone to 300 to 600 ft.
- restrict decibel levels for motorized watercraft
- limit PWC operation to specified hours
- limit motorized watercraft to 6 to 10 horsepower
- apply no wake rule to lakes 75 acres or less
- apply Rule IV to rivers as well as lakes
- apply Rule II, no wake rule, to lakes larger than 35 acres

RESPONSE: The commission recognized that any proposed rule affecting watercraft use on Montana's waters would be highly controversial. During the last 8 years, the commission has worked with representative citizen groups, held numerous issue-scoping and public meetings, helped draft legislation, completed public attitude surveys, and reviewed thousands of comments on this issue. The public clearly identified the primary needs for some type of motor boat rule. These consistently were: reduction of noise and erosion along shorelines, increase safety, and decrease conflicts with waterfowl/wildlife habitat.

The commission, the department, and the public have evaluated numerous rule alternatives such as time-of-day restrictions, type of watercraft or horsepower restrictions, no wake zones ranging from 100 ft. to greater than 300 ft., and lake size limits. The commission also considered motor boat rules on rivers. However, based on research, public input, and other ongoing recreation related activities, the commission dismissed some of these alternatives. The specific reasons are listed below by proposal type.

Restrictions on watercraft type or horsepower: these proposals discriminate against certain types of motorcraft. The commission cannot pass rules or regulations that discriminate recreational use by motorcraft or motor type because the department and other public agencies use a variety of public funds to build and maintain fishing access and other recreation sites. The acceptance of these public funds, some of which the department collects from motor fuel taxes, prohibits the commission from such discrimination. Additionally, proposals that restrict motorcraft, make or type, still allow other non-restricted boats to have wakes near shorelines and, therefore, do not adequately address the needs listed above.

No wake zones that are less than or greater than 200 ft.: the commission received support for no wake zones anywhere from 100 to 600 ft. from shoreline. The existing rule for personal watercraft is no wake within 200 ft. from docks, fishing boats, swimming areas etc. We also have a 200 ft. no wake zone around diver-down flags. Analysis showed that 300 ft. no wake zones on many popular lakes with irregular shorelines might restrict traditional higher speed uses. This could lead to increased public opposition to proposed rules as well as encourage many to use the time consuming process of filing for exemptions, a situation that the commission is trying to avoid. The commission also decided that a 100 ft. no wake zone would not address the primary needs identified for a motorized rule. The commission believes the 200 ft. no wake rule is a fair compromise that directly addresses identified public needs consistent with other existing rules.

Apply no wake rule to lakes less than 35 acres: analysis by the department's Geographic Information System for western Montana indicated that lakes 35 acres or smaller provide little room for maneuvering a high speed boat. It was also discovered that the size of most lakes in western Montana either fell below 35 acres or were greater than 50 acres. Public comment indicated poor acceptance of no wake restrictions on larger traditional high-speed lakes. The department's public survey at the Thompson Chain of Lakes indicated 80%-90% public support of the 35-acre limit.

Apply rule to rivers: the commission has addressed many recreation related issues on rivers independently of lakes. Recently, the commission adopted a position paper on recreational conflicts associated with rivers. It has also already adopted no wake rules for many rivers, including sections of the Clark Fork, Missouri, and Swan rivers. Due to the unique nature of western Montana rivers, the commission decided to address rivers on a case-by-case basis at this time.

Decibels: Montana already has motorcraft decibel levels set by state statute. Further changes to decibel levels would need to be submitted through the legislature and not the commission.

COMMENT 4: Several individuals believed that new rules were not necessary. Some commented that boaters should have a good neighbor policy and work out conflicts without more regulation. Others thought that more enforcement of existing rules should be sufficient.

RESPONSE: The commission began this process due to the number of complaints received regarding boating conflicts. During the summer months, complaints regarding conduct of motorized watercraft is one of the primary types of calls the department receives. While a good neighbor policy should work,

what is viewed as being a "good neighbor" is different from individual to individual.

While increasing the level of enforcement presence is desirable, enforcement can only be done where regulation exists. The current regulation requires a distance from dock, swimmer, or diver for PWC's, but does not protect smaller lakes from siltation and erosion, or larger bodies of water along the entire shoreline. These were seen as desirable outcomes.

COMMENT 5: Two individuals stated that in new Rule IV(2)(a) and (b) the commission should not allow an exception to no wake speed for water skiing or for PWC's that must maintain a minimum operating speed to remain upright in the water. One individual said that the commission should find out what PWC's minimum operating speed is and put a numeric speed in the rule. One individual thought that the commission should add language to new Rule IV(2)(b) requiring persons towing water skiers to travel the most direct route through the no wake zone.

RESPONSE: Exceptions for personal watercraft which must maintain a minimum speed to remain upright and maneuver in the water and personal watercraft that are towing water skiers are allowed in 23-2-531, MCA. The commission believes that the new rules should reflect the statutory exceptions for consistency. It also should be noted that the exception for watercraft towing skiers applies to all motorized watercraft, not only personal watercraft.

Calculating a precise numeric speed limit for the personal watercraft that fall under these exceptions would not be practical for operators and enforcement personnel. The personal watercraft that cannot travel at a no wake speed without tipping over are older models and are fewer in number every year. However, individuals operating any personal watercraft in an unsafe manner will be subject to citation.

The commission agreed with the individual that stated that language requiring motorized watercraft towing water skiers to travel through the no wake zone in the most direct route should be added to new Rule IV. Language was added to new Rule IV to clarify that point.

COMMENT 6: A few individuals commented that recreational conflicts exist in all of Montana, and the new rules should apply throughout the state.

RESPONSE: Much of the recreational conflict occurs on the more congested waters of western Montana where a large number of property owners and the general public share use. The central and eastern districts have fewer bodies of water and a smaller population. These factors make it practical for the commission to continue to consider rules on a case-by-case basis.

COMMENT 7: Some individuals maintained that adopting the new rules would devalue lake side property while others held that not adopting the rules would devalue lake side property.

RESPONSE: The validity of these contradictory comments is not known.

COMMENT 8: A few commentators thought that many of the recreational conflicts could be resolved by adopting rules that mandated that water traffic travel in a counterclockwise direction. Numerous individuals proposed various other regulations to solve recreational conflicts.

RESPONSE: During the regulatory process, the commission received input from numerous individuals and many different proposals to solve the recreational conflicts. The commission chose the options listed in this rule in an effort to make regulations that were simple and consistent with existing regulations. These new rules mirror those that have been tested in other states.

COMMENT 9: One individual stated that it is impractical to expect boaters to follow these rules in remote areas and that enforcement of these regulations in remote areas would also be impractical. Others believed the rules generally would not be enforceable.

RESPONSE: A listing of all lakes under 35 acres that are affected by this rule will be available to the public. The more difficult task is determining how far a boater is from the shoreline. While this will take some experience on the part of boaters, it is no different than hunting regulation where a spike must be 4 inches or longer to be legal or length limits on fish. It is the recreationist's responsibility to know the regulations.

The Enforcement Division will handle enforcement of this regulation with discretion. It is not envisioned that a citation will be issued for an individual 199 ft. from shore, but a citation would be issued when a violation is obvious.

Areas that are remote may not be an enforcement problem with these rules as remote areas, such as mountain lakes, etc., are usually not accessible to motorized watercraft. Also, remote areas, because of their location, usually do not have the numbers of recreationists and conflicts of more popular areas.

COMMENT 10: Some of the individuals commenting thought that the 200 ft. no wake zone on larger lakes should be marked with buoys.

RESPONSE: Marking the 200 ft. no wake zone with buoys on the lakes greater than 35 acres would be prohibitively expensive and time consuming. It would be difficult, and perhaps

impossible, to place buoys on such a large scale while ensuring that every buoy was not in some way a hazard. Also, marking is not necessary to adhere to the purposes of the rule.

COMMENT 11: A few commentors asserted that these rules infringe upon the rights of Montana citizens. Several individuals were opposed to more regulation.

RESPONSE: These rules are adopted under the authority of the commission to establish regulations on the use of public waters for public health, public safety, public welfare, and protection of property and public resources. The commission has statutory authority to adopt the rules, and the authority is constitutional under the general police powers of the state to reasonably regulate the conduct of its citizens. Therefore, the new rules do not infringe on any of the rights of citizens. The regulations are a policy decision of the commission that some citizens may see as restrictions while other citizens may view them as a protection of their interests.

COMMENT 12: Several individuals stated that the new rules would not resolve existing recreational conflicts.

RESPONSE: Through public input, the commission identified the most important issues any new rules needed to address: reduce noise, protect shoreline, increase safety, and provide wildlife habitat. By limiting speeds on all accessible lakes 35 acres or less (approximately 500 lakes) and by reducing speeds within 200 ft. of all other lake shorelines (with a few exceptions), the new rules directly address the most important identified problems.

COMMENT 13: Several individuals stated that the Thompson Chain of Lakes should be an exception under the new rules as these bodies of water were already part of a separate rulemaking process.

RESPONSE: The commission decided to make the lakes greater than 35 acres within the Thompson Chain of Lakes exceptions to Rule IV. The Thompson Chain of Lakes were already the subject of a separate rulemaking process as the individuals who commented noted. The lakes smaller than 35 acres are currently designated as no wake. These rules reflect the commission's commitment to resolving recreational water conflicts. The commission believes that the Thompson Chain of Lakes issues have largely been resolved by the prior rulemaking and by citizens observing voluntary rules to achieve the important objectives of these new rules.

By: /s/ S.F. Meyer

S.F. MEYER  
Commission Chairman

By: /s/ Robert N. Lane

ROBERT N. LANE  
Rule Reviewer

Certified to the Secretary of State October 16, 2000



BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )                   NOTICE OF AMENDMENT  
of ARM 17.20.804, 17.20.1501, )  
17.20.1502 and 17.20.1604        )  
pertaining to the major            )  
facility siting act                    )                   (MAJOR FACILITY SITING)

TO: All Concerned Persons

1. On August 28, 2000, the Board of Environmental Review published notice of the amendment of ARM 17.20.804, 17.20.1501, 17.20.1502 and 17.20.1604 pertaining to the major facility siting act at page 2367 of the 2000 Montana Administrative Register, Issue No. 17.

2. The board has amended ARM 17.20.804, 17.20.1501, 17.20.1502 and 17.20.1604 as proposed.

3. No comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

by: Joe Gerbase  
JOE GERBASE, Chairperson

Reviewed by:

James M. Madden  
James M. Madden, Rule Reviewer

Certified to the Secretary of State October 16, 2000.

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of amendment ) NOTICE OF AMENDMENT  
of ARM 32.8.101 through )  
32.8.103 as they relate to )  
fluid milk and grade A milk )  
products; and ARM )  
32.8.201 through 32.8.204 )  
as they relate to milk )  
freshness dating )

To: All Concerned Persons

1. On September 7, 2000, the Montana board of livestock published notice of the proposed amendment to ARM 32.24.101 through 32.8.103, regarding fluid milk and grade A milk products; and ARM 32.8.201 through 32.8.204 as they relate to milk freshness dating on page 2372 of the 2000 Montana Administrative Register, Issue No. 17.

2. The board has amended ARM 32.8.101 through 32.8.103 and ARM 32.8.201 through 32.8.204 exactly as proposed.

AUTH: 81-2-102, MCA  
IMP: 81-2-102, MCA

3. No comments or testimony were received.

By: /s/ Marc Bridges  
Marc Bridges, Exec. Officer,  
Board of Livestock  
Department of Livestock

By: /s/ Bernard A. Jacobs  
Bernard A. Jacobs, Rule Reviewer  
Livestock Chief Legal Counsel

Certified to the Secretary of State October 16, 2000.

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

In the matter of the adoption	)	CORRECTED NOTICE OF
of Rule I; the amendment of	)	ADOPTION AND AMENDMENT
ARM 16.28.101, 16.28.201,	)	
16.28.202, 16.28.203,	)	
16.28.204, 16.28.305,	)	
16.28.306, 16.28.307,	)	
16.28.601, 16.28.605D,	)	
16.28.606C, 16.28.607,	)	
16.28.608A, 16.28.609A,	)	
16.28.610A, 16.28.610B,	)	
16.28.612, 16.28.616A,	)	
16.28.616C, 16.28.623,	)	
16.28.624, 16.28.625,	)	
16.28.626A, 16.28.628A,	)	
16.28.629, 16.28.630,	)	
16.28.632C, 16.28.632D,	)	
16.28.638B and 16.28.1001	)	
pertaining to communicable	)	
disease control	)	

TO: All Interested Persons

1. On July 27, 2000, the Department of Public Health and Human Services published notice of the proposed adoption and amendment of the above-stated rules at page 1972 of the 2000 Montana Administrative Register, issue number 14, and on September 21, 2000 published notice of the adoption and amendment on page 2528 of the 2000 Montana Administrative Register, issue number 18.

2 The corrections in this notice are to ARM 16.28.101, 16.28.202, 16.28.203 and 16.28.608A. Matter to be added is underlined. Matter to be deleted is interlined.

16.28.101 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this chapter:

(1) through (25) remain as amended.

(26) "Potential epidemic outbreak" means the presence or suspected presence of a communicable disease in a population where the number of susceptible persons and the mode of transmission of the disease may cause further spread of that disease.

(27) through (35) remain as amended.

AUTH: Sec. 50-1-202, 50-2-116 and 50-17-103, MCA  
IMP: Sec. 50-1-202, 50-17-103 and 50-18-101, MCA

16.28.202 REPORTABLE DISEASES AND CONDITIONS (1) The following communicable diseases and conditions are reportable:

(a) through (r) remain as amended.

(s) ~~Gonococcal infection~~ Gonorrhoea;  
(t) through (2) remain as amended.

AUTH: Sec. 50-1-202, 50-2-118, 50-18-105 and 50-18-106,  
MCA

IMP: Sec. 50-1-202, 50-2-118, 50-17-103, 50-18-102 and  
50-18-106, MCA

16.28.203 REPORTS AND REPORT DEADLINES (1) through  
(2)(a)(v) remain as amended.

(vi) ~~Gonococcal infection~~ Gonorrhoea;  
(vii) through (6) remain as amended.

AUTH: Sec. 50-1-202, 50-17-103 and 50-18-105, MCA

IMP: Sec. 50-1-202, 50-17-103, 50-18-102 and 50-18-106,  
MCA

16.28.608A GASTROENTERITIS EPIDEMIC OUTBREAK (1) remains  
as amended.

AUTH: Sec. 50-1-202 and 50-2-118, MCA

IMP: Sec. 50-1-202 and 50-2-118, MCA

3. Two of the amendments proposed and justified in the proposal notice's rationale for the amendments were inadvertently incompletely carried out throughout the package of communicable disease rules covered by the notice. The two amendments in question were to substitute "outbreak" for "epidemic" and "gonorrhoea" for "gonococcal infection" wherever they occurred. Those amendments were in fact made in some rules but overlooked in others. Therefore, the department is correcting its notice of adoption and amendment to include the proposed changes.

4. Replacement pages for the corrected notice of adoption and amendment were submitted to the Secretary of State for the September, 2000 quarter replacement pages.

5. All other rule changes adopted and amended remain the same.

/s/ Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State October 16, 2000.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT
of ARM 42.25.1101, 42.25.1102,)	AND REPEAL
42.25.1103, 42.25.1104, )	
42.25.1105, 42.25.1111, )	
42.25.1112, 42.25.1113, )	
42.25.1114, 42.25.1115, )	
42.25.1118, 42.25.1119, )	
42.25.1701, 42.25.1702, )	
42.25.1703, 42.25.1704, )	
42.25.1706, 42.25.1707, )	
42.25.1708, 42.25.1802, )	
42.32.101, 42.32.107; and )	
repeal of ARM 42.25.1705 )	
relating to Natural Resource )	
Taxes	

TO: All Concerned Persons

1. On September 7, 2000, the Department published notice of the proposed amendment of ARM 42.25.1101, 42.25.1102, 42.25.1103, 42.25.1104, 42.25.1105, 42.25.1111, 42.25.1112, 42.25.1113, 42.25.1114, 42.25.1115, 42.25.1118, 42.25.1119, 42.25.1701, 42.25.1702, 42.25.1703, 42.25.1704, 42.25.1706, 42.25.1707, 42.25.1708, 42.25.1802, 42.32.101, 42.32.107 and repeal of ARM 42.25.1705 relating to natural resource taxes at page 2390 of the 2000 Montana Administrative Register, issue no. 17.

2. A public hearing was held on September 27, 2000, where no one appeared. No written comments were received.

3. The Department has amended and repealed the rules as proposed.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Mary Bryson  
MARY BRYSON  
Director of Revenue

Certified to Secretary of State October 16, 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<br>Subject<br>Matter          | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>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 June 30, 2000. This table includes those rules adopted during the period July 1, 2000 through September 30, 2000 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2000, this table and the table of contents of this issue of the MAR.

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

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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## 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 September 2000, appear. Vacancies scheduled to appear from November 1, 2000, through January 31, 2001, 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 October 5, 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 SEPTEMBER, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Psychologists (Commerce)			
Ms. Nancy McLees Bozeman	Governor	Witt	9/27/2000 9/1/2005
Qualifications (if required):	public member		
Board of Real Estate Appraisers (Commerce)			
Mr. Thomas C. Moss Billings	Governor	Jacobson	9/13/2000 5/1/2002
Qualifications (if required):	real estate appraiser		
Family Support Services Advisory Council (Public Health and Human Services)			
Ms. Julianne Abraham Belgrade	Governor	not listed	9/27/2000 9/27/2002
Qualifications (if required):	representative of Parent Region IV		
Ms. Phyllis Astheimer Bozeman	Governor	not listed	9/27/2000 9/27/2002
Qualifications (if required):	family support specialist		
Ms. Gwen Beyer Missoula	Governor	not listed	9/27/2000 9/27/2002
Qualifications (if required):	representative of Parent Region V		
Mr. Fred Brown Inverness	Governor	not listed	9/27/2000 9/27/2002
Qualifications (if required):	representative of Parent Region II		
Ms. Sylvia Danforth Miles City	Governor	not listed	9/27/2000 9/27/2002
Qualifications (if required):	representative of Provider/Part C Agency		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.			
Ms. Sue Forest	Governor	not listed	9/27/2000
Missoula			9/27/2002
Qualifications (if required):	representative of personnel preparation		
Rep. Mary Anne Guggenheim	Governor	not listed	9/27/2000
Helena			9/27/2002
Qualifications (if required):	representative of legislative-medical/health care services		
Ms. Lucy Hart-Paulson	Governor	not listed	9/27/2000
Missoula			9/27/2002
Qualifications (if required):	therapist representative		
Ms. Liz Harter	Governor	not listed	9/27/2000
Helena			9/27/2002
Qualifications (if required):	agency representative/State Insurance Commissioner		
Mr. John Holbrook	Governor	not listed	9/27/2000
Helena			9/27/2002
Qualifications (if required):	agency representative/State Insurance Commissioner		
Ms. Jackie Jandt	Governor	not listed	9/27/2000
Helena			9/27/2002
Qualifications (if required):	agency representative/mental health		
Ms. Ann Marie Johnson	Governor	not listed	9/27/2000
Missoula			9/27/2002
Qualifications (if required):	representative of Head Start		



BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.			
Ms. Kelly Johnson	Governor	not listed	9/27/2000
Kalispell			9/27/2002
Qualifications (if required):	representative of parents at large		
Ms. Millie Kindle	Governor	not listed	9/27/2000
Malta			9/27/2002
Qualifications (if required):	representative of Parent Region I		
Ms. Denise King	Governor	not listed	9/27/2000
Helena			9/27/2002
Qualifications (if required):	agency representative/EPSDT		
Ms. Lynda Korth	Governor	not listed	9/27/2000
Helena			9/27/2002
Qualifications (if required):	representative/Child and Family Services		
Mr. Ted Maloney	Governor	not listed	9/27/2000
Missoula			9/27/2002
Qualifications (if required):	representative at large		
Ms. Sandi Marisdotter	Governor	not listed	9/27/2000
Helena			9/27/2002
Qualifications (if required):	provider/Part C Agency		
Mr. Dan McCarthy	Governor	not listed	9/27/2000
Helena			9/27/2002
Qualifications (if required):	agency representative/preschool specialist/SEA		
Ms. Sandy McGennis	Governor	not listed	9/27/2000
Great Falls			9/27/2002
Qualifications (if required):	representative of providers		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.			
Rep. Gerald Pease	Governor	not listed	9/27/2000
Lodge Grass			9/27/2002
Qualifications (if required): representative of Parent Region II			
Ms. Patti Russ	Governor	not listed	9/27/2000
Helena			9/27/2002
Qualifications (if required): agency representative/child care			
Ms. Barbara Stefanic	Governor	not listed	9/27/2000
Laurel			9/27/2002
Qualifications (if required): LEA representative for special education co-operatives			
Ms. Chris Volinkaty	Governor	not listed	9/27/2000
Missoula			9/27/2002
Qualifications (if required): provider/Part C Agency			
Ms. Sharon Wagner	Governor	not listed	9/27/2000
Helena			9/27/2002
Qualifications (if required): representative/Special Health Services			
Governor's Advisory Council on Tobacco Use Prevention (Public Health and Human Services)			
Mr. Michael McKown	Governor	Olson	9/5/2000
Poplar			9/22/2001
Qualifications (if required): representing local tobacco coalitions			
State Workforce Investment Board (Labor and Industry)			
Mr. Charles R. Decker	Governor	Barr	9/27/2000
Libby			0/0/0
Qualifications (if required): representing business			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Telecommunications Access for Persons with Disabilities (Public Health and Human Services) Mr. Gary Duncan Helena	Governor	Ranf	9/13/2000 7/1/2003
Qualifications (if required):	representative of the largest local exchange company in Montana		
Mr. Eric Eck Helena	Governor	reappointed	9/13/2000 7/1/2003
Qualifications (if required):	representative of the Public Service Commission		
Mr. Norman Eck Helena	Governor	reappointed	9/13/2000 7/1/2003
Qualifications (if required):	non-disabled senior citizen		
Ms. Lynn Harris Missoula	Governor	Gilder	9/27/2000 7/1/2003
Qualifications (if required):	representing licensed audiologists		
Mr. Thomas P. McGree Helena	Governor	reappointed	9/27/2000 7/1/2003
Qualifications (if required):	representing the InterLATA interchange carriers		
Ms. Kathleen J. Nichols Helena	Governor	Devlin	9/13/2000 7/1/2003
Qualifications (if required):	representative of the Department of Public Health and Human Services		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alfalfa Seed Committee (Agriculture) Mr. Thomas Matchett, Billings Qualifications (if required): alfalfa seed grower	Governor	12/21/2000
Mr. Gayle Patrick, Malta Qualifications (if required): alfalfa seed grower and seller	Governor	12/21/2000
Alternative Livestock Advisory Council (Fish, Wildlife, and Parks) Mr. Stanley F. Meyer, Great Falls Qualifications (if required): representative of the Fish, Wildlife, and Parks Commission	Governor	1/1/2001
Mr. Jeremy Kinross-Wright, Big Timber Qualifications (if required): representative of the Board of Livestock	Governor	1/1/2001
Appellate Defender Commission (Administration) Ms. Beverly Kolar, Geyser Qualifications (if required): public member	Governor	1/1/2001
Board of Aeronautics (Transportation) Mr. Douglas Freeman, Hardin Qualifications (if required): member of the Montana League of Cities and Towns and an attorney	Governor	1/1/2001
Mr. Byron Bayers, Twin Bridges Qualifications (if required): member of the Montana Chamber of Commerce	Governor	1/1/2001
Mr. Fred Booth, Fort Benton Qualifications (if required): member of the Montana Pilots' Association	Governor	1/1/2001
Mr. Ronald S. Mercer, Helena Qualifications (if required): representative of the Montana Airport Management Association	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Aeronautics (Transportation) cont. Mr. William Metz, Laurel Qualifications (if required): member of the Montana Aerial Applicators	Governor	1/1/2001
Board of Chiropractors (Commerce) Dr. Gregory Hoell, Bozeman Qualifications (if required): licensed and practicing chiropractor	Governor	1/1/2001
Board of Crime Control (Justice) Mr. Don Bjertness, Billings Qualifications (if required): public member	Governor	1/1/2001
Mr. John Flynn, Townsend Qualifications (if required): county attorney	Governor	1/1/2001
Attorney General Joseph P. Mazurek, Helena Qualifications (if required): Montana's Attorney General	Governor	1/1/2001
Ms. Janet Stevens, Missoula Qualifications (if required): public member	Governor	1/1/2001
Chief Justice Jean A. Turnage, Helena Qualifications (if required): Chief Justice of the Supreme Court	Governor	1/1/2001
Mr. Rick Day, Helena Qualifications (if required): Director of the Department of Corrections	Governor	1/1/2001
Judge Dorothy B. McCarter, Helena Qualifications (if required): judge	Governor	1/1/2001
Ms. Elaine Allestad, Big Timber Qualifications (if required): county commissioner	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Crime Control (Justice) cont. Chief Robert Jones, Great Falls Qualifications (if required): representing police chiefs	Governor	1/1/2001
Sheriff Bill Slaughter, Bozeman Qualifications (if required): sheriff	Governor	1/1/2001
Mr. Ken Stuker, Helena Qualifications (if required): educator	Governor	1/1/2001
Board of Environmental Review (Environmental Quality) Mr. Joe Gerbase, Billings Qualifications (if required): local government planner	Governor	12/31/2000
Mr. Roger Perkins, Laurel Qualifications (if required): hydrologist	Governor	12/31/2000
Mr. Russell Hudson, Libby Qualifications (if required): public member	Governor	12/31/2000
Dr. Garon Smith, Missoula Qualifications (if required): scientist	Governor	12/31/2000
Board of Horse Racing (Commerce) Ms. Lou Wojciechowski, Billings Qualifications (if required): representing District 2	Governor	1/20/2001
Mr. Joe Erickson, Cascade Qualifications (if required): representing the horse racing industry	Governor	1/20/2001
Mr. Bill Brown, Butte Qualifications (if required): representing the horse racing industry	Governor	1/20/2001

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Horse Racing (Commerce) cont. Ms. Susan Austin, Kalispell Qualifications (if required): representing District 5	Governor	1/20/2001
Board of Housing (Commerce) Mr. William H. Oser, Billings Qualifications (if required): public member	Governor	1/1/2001
Mr. Robert J. Savage, Sidney Qualifications (if required): public member	Governor	1/1/2001
Mr. Tom Welch, Dillon Qualifications (if required): public member	Governor	1/1/2001
Ms. Ronda Carpenter, Great Falls Qualifications (if required): public member	Governor	1/1/2001
Board of Investments (Commerce) Mr. Dick Anderson, Helena Qualifications (if required): public member	Governor	1/1/2001
Mr. Troy W. McGee, Helena Qualifications (if required): representative of the Public Employees' Retirement Board	Governor	1/1/2001
Mr. Bill Price, Lewistown Qualifications (if required): public member	Governor	1/1/2001
Mr. Tim Ryan, Great Falls Qualifications (if required): representative of the Teachers' Retirement Board	Governor	1/1/2001
Ms. Joy N. Ott, Billings Qualifications (if required): representative of the financial community	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Labor Appeals (Labor and Industry) Mr. Joseph E. Thares, Helena Qualifications (if required): public member	Governor	1/1/2001
Ms. Carol Vega, Butte Qualifications (if required): public member	Governor	1/1/2001
Board of Occupational Therapy Practice (Commerce) Ms. Linda Botten, Bozeman Qualifications (if required): occupational therapist	Governor	12/31/2000
Board of Oil and Gas Conservation (Natural Resources and Conservation) Mr. Allen C. Kolstad, Chester Qualifications (if required): public member	Governor	1/1/2001
Mr. Stanley Lund, Reserve Qualifications (if required): public member	Governor	1/1/2001
Mr. George Galuska, Billings Qualifications (if required): represents oil and gas industry	Governor	1/1/2001
Mr. David Ballard, Billings Qualifications (if required): oil and gas industry	Governor	1/1/2001
Board of Pardons (Corrections and Human Services) Mr. Gary Weer, Deer Lodge Qualifications (if required): public member	Governor	1/1/2001
Ms. Roxanna Wilson, Busby Qualifications (if required): auxiliary member and a Native American	Governor	1/1/2001



VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Personnel Appeals (Labor and Industry) Mr. Leo Perkins, Deer Lodge Qualifications (if required): representing labor unions	Governor	1/1/2001
Mr. Thomas Schneider, Helena Qualifications (if required): representing labor unions	Governor	1/1/2001
Mr. Bradley B. Talcott, Great Falls Qualifications (if required): representing management	Governor	1/1/2001
Board of Public Assistance (Public Health and Human Services) Ms. Gloria Paladichuk, Sidney Qualifications (if required): public member	Governor	1/1/2001
Mr. Dick Heineman, Wibaux Qualifications (if required): attorney	Governor	1/1/2001
Board of Respiratory Care Practitioners (Commerce) Ms. Iris L. Bungay, Cut Bank Qualifications (if required): certified respiratory therapist technician	Governor	1/1/2001
Ms. Linda Davis, Townsend Qualifications (if required): public member	Governor	1/1/2001
Board of Social Work Examiners and Professional Counselors (Commerce) Ms. Mary Meis, Conrad Qualifications (if required): social worker	Governor	1/1/2001
Mr. Ervin Booth, Roundup Qualifications (if required): professional counselor	Governor	1/1/2001
Mr. Patrick Wolberd, Billings Qualifications (if required): social worker	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Social Work Examiners and Professional Counselors (Commerce) cont. Mr. James Armstrong, Fort Harrison Qualifications (if required): social worker	Governor	1/1/2001
Children's Trust Fund Board (Public Health and Human Services) Mr. Chuck Hunter, Helena Qualifications (if required): Department of Public Health and Human Services representative	Governor	1/1/2001
Coal Board (Commerce) Mr. Alan Evans, Roundup Qualifications (if required): residing in an impact area and District 4	Governor	1/1/2001
Mr. Gerald Feda, Glasgow Qualifications (if required): public member residing in District 3	Governor	1/1/2001
Mr. Roger Knapp, Hysham Qualifications (if required): residing in an impact area and District 4	Governor	1/1/2001
Mr. James W. Royan, Missoula Qualifications (if required): public member residing in District 1	Governor	1/1/2001
Committee for the Humanities (Governor) Mr. Robert Poore, Butte Qualifications (if required): public member	Governor	1/2/2001
Ms. Jamie Doggett, White Sulphur Springs Qualifications (if required): public member	Governor	1/2/2001
Rep. Arla Jeanne Murray, Miles City Qualifications (if required): public member	Governor	1/2/2001

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Committee for the Humanities (Governor) cont. Dr. William Bevis, Missoula Qualifications (if required): public member	Governor	1/2/2001
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) Ms. June Powell, Browning Qualifications (if required): Native American and has a family member with a developmental disability	Governor	1/1/2001
Mr. Dan McCarthy, Helena Qualifications (if required): representing the Office of Public Instruction	Governor	1/1/2001
Mr. Jon Hesse, Livingston Qualifications (if required): attorney	Governor	1/1/2001
Ms. Marlene Disburg, Helena Qualifications (if required): representing vocational rehabilitation	Governor	1/1/2001
Ms. Vonnie Koenig, Kalispell Qualifications (if required): representing consumers	Governor	1/1/2001
Sen. Bea McCarthy, Anaconda Qualifications (if required): State Senator	Governor	1/1/2001
Mr. Robert J. Tallon, Bozeman Qualifications (if required): representing service provider organizations	Governor	1/1/2001
Mr. Thomas Price, Eureka Qualifications (if required): representative of Region V	Governor	1/1/2001
Mrs. Othelia Schulz, Anaconda Qualifications (if required): representative of Region IV	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) cont. Dr. Timm Vogelsberg, Missoula Qualifications (if required): representing a university program	Governor	1/1/2001
Mr. Charlie Rehbein, Helena Qualifications (if required): representative of program services of the Older Americans Act of 1995	Governor	1/1/2001
Rep. Bob Lawson, Whitefish Qualifications (if required): State Representative	Governor	1/1/2001
Mr. Bernadette Franks-Ongoy, Helena Qualifications (if required): representing the Montana Advocacy Program	Governor	1/1/2001
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) Mr. Tony Harbaugh, Miles City Qualifications (if required): Custer County Sheriff's Office	Director	11/10/2000
Mr. James F. Jacobsen, Helena Qualifications (if required): none specified	Director	11/10/2000
Mr. Henry "Bill" Hopkins, Ismay Qualifications (if required): Disabled American Veterans	Director	11/10/2000
Ms. Betty Hopkins, Ismay Qualifications (if required): Disabled American Veterans Auxilliary	Director	11/10/2000
Jess Erickson, Miles City Qualifications (if required): Veterans of Foreign Wars	Director	11/10/2000

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) cont. Ms. Mary Jane Warrior, Miles City Qualifications (if required): Veterans of Foreign Wars Auxiliary	Director	11/10/2000
Mr. Bob Beals, Forsyth Qualifications (if required): American Legion	Director	11/10/2000
Ms. Linda Dolatta, Terry Qualifications (if required): American Legion Auxilliary	Director	11/10/2000
Mr. Gilbert Walker, Billings Qualifications (if required): Disabled American Veterans	Director	11/10/2000
Ms. Marilyn Peterson, Billings Qualifications (if required): Disabled American Veterans Auxilliary	Director	11/10/2000
Mr. Gerald Schlepp, Miles City Qualifications (if required): Veterans of Foreign Wars	Director	11/10/2000
Ms. Lori Price, Miles City Qualifications (if required): Veterans of Foreign Wars Auxilliary	Director	11/10/2000
Mr. Bill Dolatta, Terry Qualifications (if required): American Legion	Director	11/10/2000
Ms. Jeanette Elmore, Baker Qualifications (if required): American Legion Auxilliary	Director	11/10/2000
Mr. Ed Blaesius, Billings Qualifications (if required): Military Order of Purple Heart	Director	11/10/2000
Mr. Jim Bertrand, Miles City Qualifications (if required): Military Order of the Cooties	Director	11/10/2000

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Eastern Montana State Veterans Cemetery Advisory Council Mr. Stanley Watson, Forsyth Qualifications (if required): Marine Corps League	(Military Affairs) cont. Director	11/10/2000
Mr. Victor Leikam, Billings Qualifications (if required): 40 & 8	Director	11/10/2000
Mr. Frank Stoltz, Miles City Qualifications (if required): Prisoners of War	Director	11/10/2000
Mr. Ralph Dukart, Miles City Qualifications (if required): Department of Military Affairs	Director	11/10/2000
Mr. Joseph Volz, Miles City Qualifications (if required): Marine Corps League	Director	11/10/2000
Mr. Robert A. Fagan, Billings Qualifications (if required): 40 & 8	Director	11/10/2000
Mr. Ed Croucher, Glendive Qualifications (if required): Vietnam Veterans of America	Director	11/10/2000
Mr. Frederick S. Rambur, Miles City Qualifications (if required): Department of Military Affairs	Director	11/10/2000
Mr. Tom Frank, Miles City Qualifications (if required): Custer County Sheriff/Coroner	Director	11/10/2000
Mr. Joe Stevenson, Miles City Qualifications (if required): Custer County Commissioner	Director	11/10/2000

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Electric Utility Industry Restructuring Advisory Committee (Legislative Services) Mr. Donald Quander, Billings Qualifications (if required): representing the industrial community	Governor	1/1/2001
Ms. Roma Taylor, Big Fork Qualifications (if required): representing the nonindustrial retail electric consumer section	Governor	1/1/2001
Mr. Gene Leuwer, Helena Qualifications (if required): representing a low-income program provider	Governor	1/1/2001
Mr. Stephen E. Bradley, Crow Agency Qualifications (if required): representing Montana's Indian tribes	Governor	1/1/2001
Mr. Stan Dupree, Butte Qualifications (if required): representing organized labor	Governor	1/1/2001
Ms. Kathy Hadley, Butte Qualifications (if required): representing community comprising environmental and conservation interests	Governor	1/1/2001
Mr. Neil Colwell, Boise, ID Qualifications (if required): representing the electric power market industry	Governor	1/1/2001
Fish, Wildlife, and Parks Commission (Fish, Wildlife, and Parks) Mr. David Simpson, Hardin Qualifications (if required): resident of District V	Governor	1/1/2001
Mr. Charles R. Decker, Libby Qualifications (if required): resident of District I	Governor	1/1/2001
Mr. Stanley F. Meyer, Great Falls Qualifications (if required): resident of District III	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) Mr. Frank Gary, Butte Qualifications (if required): public member	Governor	11/23/2000
Dr. Paul Kathrein, Great Falls Qualifications (if required): public member	Governor	11/23/2000
Mr. Steven C. Yeakel, Helena Qualifications (if required): public member	Governor	11/23/2000
Ms. Verbena Savior, Poplar Qualifications (if required): public member	Governor	11/23/2000
Mr. David Herrera, Billings Qualifications (if required): public member	Governor	11/23/2000
Ms. Rita Munzenrider, Lolo Qualifications (if required): public member	Governor	11/23/2000
Ms. Teresa Louise Dunn, Whitefish Qualifications (if required): public member	Governor	11/23/2000
Sen. John Bohlinger, Billings Qualifications (if required): legislator	Governor	11/23/2000
Ms. Geraldine (Jeri) Snell, Miles City Qualifications (if required): public member	Governor	11/23/2000
Ms. Pam Bragg, Helena Qualifications (if required): public member	Governor	11/23/2000
Ms. Kim Kovanda, Columbus Qualifications (if required): student representative	Governor	11/23/2000



VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) cont. Dr. Raymond Geyer, Great Falls Qualifications (if required): public member	Governor	11/23/2000
Mr. Kevin Petersen, Clancy Qualifications (if required): public member	Governor	11/23/2000
Ms. Shelly Johnson, Fairfield Qualifications (if required): public member	Governor	11/23/2000
Ms. Sheryl Dernbach, Billings Qualifications (if required): public member	Governor	11/23/2000
Mr. Fred Zaino, Conrad Qualifications (if required): public member	Governor	11/23/2000
Hail Insurance Board (Agriculture) Auditor Mark O'Keefe, Helena Qualifications (if required): State Auditor	Governor	1/1/2001
Mr. W. Ralph Peck, Helena Qualifications (if required): Director of the Department of Agriculture	Governor	1/1/2001
Hard Rock Mining Impact Board (Commerce) Mr. Roger W. Kornder, Lincoln Qualifications (if required): represents major financial institution and resides in an impact area	Governor	1/1/2001
Ms. Carol Kienenberger, Dodson Qualifications (if required): County Commissioner residing in an impact area	Governor	1/1/2001
Ms. Tammy Johnson, Whitehall Qualifications (if required): hard rock mining industry representative	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Human Rights Commission (Labor and Industry) Ms. S. Jane Lopp, Kalispell Qualifications (if required): public member	Governor	1/1/2001
Ms. Gloria "Patt" Etchart, Glasgow Qualifications (if required): public member	Governor	1/1/2001
Ms. Evelyn Stevenson, Pablo Qualifications (if required): attorney	Governor	1/1/2001
Independent Living Advisory Council (Public Health and Human Services) Ms. Shelly Laing, Kalispell Qualifications (if required): none specified	Director	1/1/2001
Ms. Flo Kiewel, Columbia Falls Qualifications (if required): none specified	Director	1/1/2001
Ms. Wilfred "Max" Bear, Poplar Qualifications (if required): none specified	Director	1/1/2001
Joint Subcommittee on Postsecondary Education Policy and Budget (Legislature) Mr. Erik Burke, Helena Qualifications (if required): representative of the Governor's Office	Governor	12/31/2000
Mr. Brad Faulhaber, Dillon Qualifications (if required): student representative	Governor	12/31/2000
Judicial Nomination Commission (Justice) Mr. David Bliss, Conrad Qualifications (if required): public member	Governor	1/1/2001
Mr. L. Randall Bishop, Billings Qualifications (if required): none specified	Supreme Court	12/31/2000

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Milk Control Board (Livestock) Ms. Dixie S. Hertel, Moore Qualifications (if required): republican	Governor	1/1/2001
Mr. Milton "Swede" Olson, Whitewater Qualifications (if required): republican	Governor	1/1/2001
Mr. Jesse Russell Gleason, Fairfield Qualifications (if required): republican	Governor	1/1/2001
Montana Children's Trust Fund Board (Public Health and Human Services) Ms. Judy Birch, Helena Qualifications (if required): public member	Governor	1/1/2001
Ms. Barbara Campbell, Deer Lodge Qualifications (if required): public member	Governor	1/1/2001
Mr. Kirk Astroth, Belgrade Qualifications (if required): public member	Governor	1/1/2001
Mr. Mark A. Bryan, Bozeman Qualifications (if required): public member	Governor	1/1/2001
Montana Grass Conservation Commission (Natural Resources and Conservation) Mr. Dewayne Ozard, Glasgow Qualifications (if required): grazing district preference holder	Governor	1/1/2001
Montana Health Facility Authority Board (Commerce) Dr. Amos R. Little, Jr., Helena Qualifications (if required): public member	Governor	1/1/2001
Ms. Gayle Carpenter, Helena Qualifications (if required): public member	Governor	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Health Facility Authority Board (Commerce) cont. Ms. Joyce Asay, Forsyth Qualifications (if required): public member	Governor	1/1/2001
Mr. Michael P. Varone, Helena Qualifications (if required): public member	Governor	1/1/2001
Montana Higher Education Student Assistance Corporation (Education) Mr. Richard Bartos, Helena Qualifications (if required): public member	Governor	1/1/2001
Montana State Lottery Commission (Commerce) Ms. Becky Erickson, Glasgow Qualifications (if required): public member	Governor	1/1/2001
Sheriff Clifford Brophy, Columbus Qualifications (if required): law enforcement officer	Governor	1/1/2001
Montana Vocational Rehabilitation Council (Public Health and Human Services) Ms. Arlene Templer, St. Ignatius Qualifications (if required): none specified	Director	11/30/2000
Ms. Martha Lehman, Helena Qualifications (if required): none specified	Director	12/15/2000
Motor Fuel Tax Collection, Enforcement and Refund Advisory Council (Transportation) Mr. Joel T. Long, Billings Qualifications (if required): representative of the Montana Contractors Association	Governor	12/31/2000
Rep. Gary Beck, Deer Lodge Qualifications (if required): legislator	Governor	12/31/2000

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Motor Fuel Tax Collection, Enforcement and Refund Advisory Council (Transportation) cont. Ms. Rona Alexander, Bozeman Qualifications (if required): representative of the Montana Petroleum Marketers Association	Governor	12/31/2000
Sen. Ric Holden, Glendive Qualifications (if required): legislator	Governor	12/31/2000
Rep. Roger Somerville, Kalispell Qualifications (if required): legislator	Governor	12/31/2000
Sen. Debbie Shea, Butte Qualifications (if required): legislator	Governor	12/31/2000
Mr. Bob Stephens, Dutton Qualifications (if required): representative of the Montana Grain Growers	Governor	12/31/2000
Mr. Patrick McNulty, Buffalo Qualifications (if required): representative of the Montana Agricultural Producers	Governor	12/31/2000
Mr. Keith Olson, Kalispell Qualifications (if required): representative of the Montana Logging Association	Governor	12/31/2000
Ms. Gail Abercrombie, Helena Qualifications (if required): representative of the Montana Petroleum Association	Governor	12/31/2000
Mr. Robert Turner, Helena Qualifications (if required): representative of the Montana Department of Transportation	Governor	12/31/2000
Mr. Wes Choc, Helena Qualifications (if required): representative of AAA of Montana	Governor	12/31/2000

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Motor Fuel Tax Collection, Enforcement and Refund Advisory Council (Transportation) cont. Mr. Jim Peterson, Buffalo Qualifications (if required): representative of the Montana Stockgrowers Association	Governor	12/31/2000
Mr. Mike Gauthier, Missoula Qualifications (if required): representative of the Montana Motor Carriers Association	Governor	12/31/2000
Northwest Power Planning Council (Governor) Mr. Stan Grace, Helena Qualifications (if required): none specified	Governor	1/1/2001
Mr. John N. Etchart, Fort Worth, TX Qualifications (if required): none specified	Governor	1/1/2001
State Employee Group Benefits Advisory Council (Administration) Mr. William Salisbury, Helena Qualifications (if required): none specified	Director	1/1/2001
Mr. Thomas Schneider, Helena Qualifications (if required): none specified	Director	1/1/2001
Mr. Dale Taliaferro, Helena Qualifications (if required): none specified	Director	1/1/2001
Ms. Nancy Ellery, Helena Qualifications (if required): none specified	Director	1/1/2001
Mr. Curt Nichols, Helena Qualifications (if required): none specified	Director	1/1/2001
Mr. Jim Penner, Helena Qualifications (if required): none specified	Director	1/1/2001

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employee Group Benefits Advisory Council (Administration) cont. Mr. Mark Cress, Helena Qualifications (if required): none specified	Director	1/1/2001
Ms. Cathy Kendall, Helena Qualifications (if required): none specified	Director	1/1/2001
Mr. John W. Northey, Helena Qualifications (if required): none specified	Director	1/1/2001
Ms. Angela McDannel, Helena Qualifications (if required): none specified	Director	1/1/2001
State Tax Appeal Board (Administration) Representative Jan Brown, Helena Qualifications (if required): public member	Governor	1/1/2001
Transportation Commission (Transportation) Ms. Patricia Abelin, Bozeman Qualifications (if required): Republican from District 2	Governor	1/1/2001
Mr. Thorm R. Forseth, Billings Qualifications (if required): Independent from District 5	Governor	1/1/2001
Mr. Robert C. McKenna, Helena Qualifications (if required): Democrat from District 3	Governor	1/1/2001
Trauma Care Committee (Public Health and Human Services) Dr. John Middleton, Billings Qualifications (if required): representing the Montana Committee on Trauma	Governor	11/2/2000

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2000 through January 31, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Trauma Care Committee (Public Health and Human Services) cont. Dr. Joseph Leal, Glendive Qualifications (if required): representing the Eastern Regional Trauma Advisory Committee	Governor	11/2/2000
Dr. A. Craig Eddy, Missoula Qualifications (if required): representing the Western Regional Trauma Advisory Committee	Governor	11/2/2000
Dr. Michael B. Orcutt, Great Falls Qualifications (if required): representing the Center Regional Trauma Advisory Committee	Governor	11/2/2000
Ms. Kim Sorensen, Billings Qualifications (if required): representing the Montana Trauma Coordinators	Governor	11/2/2000
Dr. Kendall Flint, Browning Qualifications (if required): representing Indian Health Service	Governor	11/2/2000
Dr. Charles Rinker, Bozeman Qualifications (if required): representing the Montana Medical Association	Governor	11/2/2000
Ms. Mary Phillips, Great Falls Qualifications (if required): representing the Montana Emergency Nurses Association	Governor	11/2/2000
Ms. Cindy Peterson, Great Falls Qualifications (if required): representating the Central Regional Trauma Advisory Council	Governor	11/2/2000
Ms. Dory Fried, Malta Qualifications (if required): representating the Eastern Regional Trauma Care Advisory Council	Governor	11/2/2000
Mr. John M. Mootry, Dillon Qualifications (if required): representing the Montana Hospital Association	Governor	11/2/2000



ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Attorney General Attorney General Joseph P. Mazurek, Helena Qualifications (if required): none specified	Elected	1/1/2001
Chief Supreme Court Justice Chief Justice Jean A. Turnage, Helena Qualifications (if required): none specified	Elected	1/1/2001
Clerk of the Supreme Court Clerk Ed Smith, Helena Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 1st Judicial District Judge Dorothy B. McCarter, Helena Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 1st Judicial District Judge Jeffrey Sherlock, Helena Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 2nd Judicial District Judge James E. Purcell, Butte Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 2nd Judicial District Judge John W. (Jack) Whelan, Butte Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 3rd Judicial District Judge Ted Mizner, Anaconda Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
District Court Judge, 4th Judicial District Judge Ed McLean, Missoula Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 4th Judicial District Judge John S. Henson, Missoula Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 4th Judicial District Judge John Larson, Missoula Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 5th Judicial District Judge Frank M. Davis, Dillon Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 6th Judicial District Judge William Nels Swandal, Livingston Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 7th Judicial District Judge Richard A. Simonton, Glendive Qualifications (if required): none specified	Governor	1/1/2001
District Court Judge, 8th Judicial District Judge Thomas M. McKittrick, Great Falls Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 8th Judicial District Judge Marge Johnson, Great Falls Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
District Court Judge, 8th Judicial District Judge Robert P. Goff, Great Falls Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 9th Judicial District Judge Marc George Buyske, Shelby Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 10th Judicial District Judge John R. Christensen, Stanford Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 11th Judicial District Judge Ted O. Lympus, Kalispell Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 11th Judicial District Judge Katherine "Kitty" Curtis, Columbia Falls Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 11th Judicial District Judge Stewart Evans Stadler, Whitefish Qualifications (if required): none specified	Governor	1/1/2001
District Court Judge, 12th Judicial District Judge John Warner, Havre Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 13th Judicial District Judge Diana Barz, Billings Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
District Court Judge, 13th Judicial District Judge Russell Fagg, Billings Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 13th Judicial District Judge Robert W. Holmstrom, Billings Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 14th Judicial District Judge Roy C. Rodeghiero, Roundup Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 15th Judicial District Judge David Cybulski, Plentywood Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 16th Judicial District Judge Gary L. Day, Miles City Qualifications (if required): Elected	Elected	1/1/2001
District Court Judge, 16th Judicial District Judge Kenneth R. Wilson, Miles City Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 16th Judicial District Judge Joe L. Hegel, Forsyth Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 17th Judicial District Judge John McKeon, Malta Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
District Court Judge, 18th Judicial District Judge Thomas A. Olson, Bozeman Qualifications (if required): none specified	Elected	1/1/2001
District Court Judge, 22nd Judicial District Judge Willis Blair Jones, Park City Qualifications (if required): none specified	Governor	1/1/2001
Governor Governor Marc Racicot, Helena Qualifications (if required): none specified	Elected	1/1/2001
House District 1 Rep. Marian Hanson, Ashland Qualifications (if required): none specified	Elected	1/1/2001
House District 2 Rep. Ralph Lenhart, Glendive Qualifications (if required): none specified	Elected	1/1/2001
House District 3 Rep. Tom Zook, Miles City Qualifications (if required): none specified	Elected	1/1/2001
House District 4 Rep. Gary Matthews, Miles City Qualifications (if required): none specified	Elected	1/1/2001
House District 5 Rep. Lila V. Taylor, Busby Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
House District 6 Rep. Bill Eggers, Crow Agency Qualifications (if required): none specified	Elected	1/1/2001
House District 7 Rep. Monica J. Lindeen, Huntley Qualifications (if required): none specified	Elected	1/1/2001
House District 8 Rep. Bob Clark, Ryegate Qualifications (if required): none specified	Elected	1/1/2001
House District 9 Rep. Mark E. Noennig, Billings Qualifications (if required): none specified	Elected	1/1/2001
House District 10 Rep. Royal C. Johnson, Billings Qualifications (if required): none specified	Elected	1/1/2001
House District 11 Rep. Kim Gillan, Billings Qualifications (if required): none specified	Elected	1/1/2001
House District 12 Rep. Loren Soft, Billings Qualifications (if required): none specified	Elected	1/1/2001
House District 13 Rep. Joan Hurdle, Billings Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
House District 14 Rep. Roy Brown, Billings Qualifications (if required): none specified	Elected	1/1/2001
House District 15 Rep. Daniel C. Fuchs, Billings Qualifications (if required): none specified	Elected	1/1/2001
House District 16 Rep. Jay Stovall, Billings Qualifications (if required): none specified	Elected	1/1/2001
House District 17 Rep. Billie Krenzler, Billings Qualifications (if required): none specified	Elected	1/1/2001
House District 18 Rep. Bruce T. Simon, Billings Qualifications (if required): none specified	Elected	1/1/2001
House District 19 Rep. Tom Dell, Billings Qualifications (if required): none specified	Elected	1/1/2001
House District 20 Rep. Peggy Arnott-Bergsagel, Billings Qualifications (if required): none specified	Elected	1/1/2001
House District 21 Rep. Daniel W. McGee, Laurel Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
House District 22 Rep. Brad Molnar, Laurel Qualifications (if required): none specified	Elected	1/1/2001
House District 23 Rep. Joan Andersen, Fromberg Qualifications (if required): none specified	Elected	1/1/2001
House District 24 Rep. Robert R. Story, Jr., Park City Qualifications (if required): none specified	Elected	1/1/2001
House District 25 Rep. Shiell W. Anderson, Livingston Qualifications (if required): none specified	Elected	1/1/2001
House District 26 Rep. Bob Raney, Livingston Qualifications (if required): none specified	Elected	1/1/2001
House District 28 Rep. Cindy E. Younkin, Bozeman Qualifications (if required): none specified	Elected	1/1/2001
House District 29 Rep. Beverly Barnhart, Bozeman Qualifications (if required): none specified	Elected	1/1/2001
House District 30 Rep. Emily Swanson, Bozeman Qualifications (if required): none specified	Elected	1/1/2001



ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
House District 31 Rep. Steve Vick, Belgrade Qualifications (if required): none specified	Elected	1/1/2001
House District 32 Rep. Joe Barnett, Belgrade Qualifications (if required): none specified	Elected	1/1/2001
House District 33 Rep. Karl Ohs, Harrison Qualifications (if required): none specified	Elected	1/1/2001
House District 34 Rep. Bill Tash, Dillon Qualifications (if required): none specified	Elected	1/1/2001
House District 35 Rep. Steven J. Gallus, Butte Qualifications (if required): none specified	Elected	1/1/2001
House District 36 Rep. Joe Quillici, Butte Qualifications (if required): none specified	Elected	1/1/2001
House District 37 Rep. Robert J. "Bob" Pavlovich, Butte Qualifications (if required): none specified	Elected	1/1/2001
House District 38 Rep. Dan W. Harrington, Butte Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
House District 39 Rep. Rick Dale, Whitehall Qualifications (if required): none specified	Elected	1/1/2001
House District 40 Rep. Gay Ann Masolo, Townsend Qualifications (if required): none specified	Elected	1/1/2001
House District 41 Rep. Brennan Ryan, Stockett Qualifications (if required): none specified	Elected	1/1/2001
House District 42 Rep. Trudi Schmidt, Great Falls Qualifications (if required): none specified	Elected	1/1/2001
House District 43 Rep. Diana Wyatt, Great Falls Qualifications (if required): none specified	Elected	1/1/2001
House District 44 Rep. George Golie, Great Falls Qualifications (if required): none specified	Elected	1/1/2001
House District 45 Rep. Jeff Mangan, Great Falls Qualifications (if required): none specified	Elected	1/1/2001
House District 46 Rep. Carley Tuss, Black Eagle Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
House District 47 Rep. Joe Tropila, Great Falls Qualifications (if required): none specified	Elected	1/1/2001
House District 48 Rep. Kathleen M. Galvin-Halcro, Great Falls Qualifications (if required): none specified	Elected	1/1/2001
House District 49 Rep. Joe McKenney, Great Falls Qualifications (if required): none specified	Elected	1/1/2001
House District 50 Rep. John Cobb, Augusta Qualifications (if required): none specified	Elected	1/1/2001
House District 51 Rep. Chris Ahner, Helena Qualifications (if required): none specified	Elected	1/1/2001
House District 52 Rep. Hal Harper, Helena Qualifications (if required): none specified	Elected	1/1/2001
House District 53 Rep. David Ewer, Helena Qualifications (if required): none specified	Elected	1/1/2001
House District 54 Rep. Chase Hibbard, Helena Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
House District 55 Rep. Mary Anne Guggenheim, Helena Qualifications (if required): none specified	Elected	1/1/2001
House District 56 Rep. Gary Beck, Deer Lodge Qualifications (if required): none specified	Elected	1/1/2001
House District 57 Rep. William T. "Red" Menahan, Anaconda Qualifications (if required): none specified	Elected	1/1/2001
House District 58 Rep. Doug Mood, Seeley Lake Qualifications (if required): none specified	Elected	1/1/2001
House District 59 Rep. Cliff Trexler, Corvallis Qualifications (if required): none specified	Elected	1/1/2001
House District 60 Rep. Allan Walters, Hamilton Qualifications (if required): none specified	Elected	1/1/2001
House District 61 Rep. Jim Shockley, Victor Qualifications (if required): none specified	Elected	1/1/2001
House District 62 Rep. Matt Brainard, Missoula Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
House District 63 Rep. Dick Haines, Missoula Qualifications (if required): none specified	Elected	1/1/2001
House District 64 Rep. Ron Erickson, Missoula Qualifications (if required): none specified	Elected	1/1/2001
House District 65 Rep. Rosalie Buzzas, Missoula Qualifications (if required): none specified	Elected	1/1/2001
House District 66 Rep. Gail Gutsche, Missoula Qualifications (if required): none specified	Elected	1/1/2001
House District 67 Rep. Tom Facey, Missoula Qualifications (if required): none specified	Elected	1/1/2001
House District 68 Rep. Carolyn Squires, Missoula Qualifications (if required): none specified	Elected	1/1/2001
House District 69 Rep. Carol Williams, Missoula Qualifications (if required): none specified	Elected	1/1/2001
House District 70 Rep. Linda McCulloch, Missoula Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
House District 71 Rep. Sylvia Bookout-Reinicke, Alberton Qualifications (if required): none specified	Elected	1/1/2001
House District 72 Rep. Paul Clark, Trout Creek Qualifications (if required): none specified	Elected	1/1/2001
House District 73 Rep. Rick Jore, Ronan Qualifications (if required): none specified	Elected	1/1/2001
House District 74 Rep. John Mercer, Polson Qualifications (if required): none specified	Elected	1/1/2001
House District 75 Rep. Stanley M. Fisher, Bigfork Qualifications (if required): none specified	Elected	1/1/2001
House District 76 Rep. Paul Sliter, Somers Qualifications (if required): none specified	Elected	1/1/2001
House District 77 Rep. Rod Bitney, Kalispell Qualifications (if required): none specified	Elected	1/1/2001
House District 78 Rep. Roger Somerville, Kalispell Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
House District 79 Rep. Verdell Jackson, Kalispell Qualifications (if required): none specified	Elected	1/1/2001
House District 80 Rep. Bob Lawson, Whitefish Qualifications (if required): none specified	Elected	1/1/2001
House District 81 Rep. Aubyn Curtiss, Fortine Qualifications (if required): none specified	Elected	1/1/2001
House District 82 Rep. Scott J. Orr, Libby Qualifications (if required): none specified	Elected	1/1/2001
House District 83 Rep. Douglas T. Wagner, Hungry Horse Qualifications (if required): none specified	Elected	1/1/2001
House District 84 Rep. Darrel Adams, Columbia Falls Qualifications (if required): none specified	Elected	1/1/2001
House District 85 Rep. Carol C. Juneau, Browning Qualifications (if required): none specified	Elected	1/4/2001
House District 86 Rep. John L. Holden, Valier Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
House District 87 Rep. John "Sam" Rose, Choteau Qualifications (if required): none specified	Elected	1/1/2001
House District 88 Rep. Edith J. Clark, Sweet Grass Qualifications (if required): none specified	Elected	1/1/2001
House District 89 Rep. John E. Witt, Carter Qualifications (if required): none specified	Elected	1/1/2001
House District 90 Rep. Antoinette R. Hagener, Havre Qualifications (if required): none specified	Elected	1/1/2001
House District 91 Rep. Ray Peck, Havre Qualifications (if required): none specified	Elected	1/1/2001
House District 92 Rep. Matt McCann, Harlem Qualifications (if required): none specified	Elected	1/1/2001
House District 93 Rep. Bill Thomas, Hobson Qualifications (if required): none specified	Elected	1/1/2001
House District 94 Rep. Larry Hal Grinde, Lewistown Qualifications (if required): none specified	Elected	1/1/2001



ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
House District 95 Rep. Ernest Bergsagel, Malta Qualifications (if required): none specified	Elected	1/1/2001
House District 96 Rep. Sam Kitzenberg, Glasgow Qualifications (if required): none specified	Elected	1/1/2001
House District 97 Rep. Donald L. Hedges, Antelope Qualifications (if required): none specified	Elected	1/1/2001
House District 98 Rep. Frank J. Smith, Poplar Qualifications (if required): none specified	Elected	1/1/2001
House District 99 Rep. Betty Lou Kasten, Brockway Qualifications (if required): none specified	Elected	1/1/2001
House District 100 Rep. William (Bill) Rehbein, Jr., Lambert Qualifications (if required): none specified	Elected	1/1/2001
Lieutenant Governor Lt. Governor Judy Martz, Helena Qualifications (if required): none specified	Elected	1/1/2001
Public Service Commission, District 2 Ms. Nancy McCaffree, Helena Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Public Service Commission, District 4 Mr. Dave Fisher, Butte Qualifications (if required): none specified	Elected	1/1/2001
Public Service Commission, District 5 Mr. Bob Rowe, Missoula Qualifications (if required): none specified	Elected	1/1/2001
Secretary of State Secretary Mike Cooney, Helena Qualifications (if required): none specified	Elected	1/1/2001
Senate District 2 Sen. Gerry Devlin, Terry Qualifications (if required): none specified	Elected	1/1/2001
Senate District 3 Sen. Reiny Jabs, Hardin Qualifications (if required): none specified	Elected	1/1/2001
Senate District 5 Sen. Thomas F. Keating, Billings Qualifications (if required): none specified	Elected	1/1/2001
Senate District 6 Sen. Mike Sprague, Billings Qualifications (if required): none specified	Elected	1/1/2001
Senate District 8 Sen. William E. (Bill) Glaser, Huntley Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Senate District 10 Sen. Bruce Crippen, Billings Qualifications (if required): none specified	Elected	1/1/2001
Senate District 15 Sen. Dorothy Eck, Bozeman Qualifications (if required): none specified	Elected	1/1/2001
Senate District 17 Sen. Chuck Swysgood, Dillon Qualifications (if required): none specified	Elected	1/1/2001
Senate District 18 Sen. Debbie Bowman Shea, Butte Qualifications (if required): none specified	Elected	1/1/2001
Senate District 19 Sen. John "J.D." Lynch, Butte Qualifications (if required): none specified	Elected	1/1/2001
Senate District 22 Sen. Bill Wilson, Great Falls Qualifications (if required): none specified	Elected	1/1/2001
Senate District 25 Sen. Ken Mesaros, Cascade Qualifications (if required): none specified	Elected	1/1/2001
Senate District 27 Sen. Sue Bartlett, Helena Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Senate District 29 Sen. Bea McCarthy, Anaconda Qualifications (if required): none specified	Elected	1/1/2001
Senate District 30 Sen. Dale E. Berry, Hamilton Qualifications (if required): none specified	Appointed	1/1/2001
Senate District 31 Sen. Fred Thomas, Stevensville Qualifications (if required): none specified	Elected	1/1/2001
Senate District 32 Sen. Vicki Cocchiarella, Missoula Qualifications (if required): none specified	Elected	1/1/2001
Senate District 35 Sen. Dale Mahlum, Missoula Qualifications (if required): none specified	Elected	1/1/2001
Senate District 36 Sen. Barry "Spook" Stang, St. Regis Qualifications (if required): none specified	Elected	1/1/2001
Senate District 37 Sen. Mike Taylor, Proctor Qualifications (if required): none specified	Elected	1/1/2001
Senate District 40 Sen. Bob DePratu, Whitefish Qualifications (if required): none specified	Elected	1/1/2001

ELECTED OFFICIAL VACANCIES

<u>Current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Senate District 42 Sen. John G. Harp, Kalispell Qualifications (if required): none specified	Elected	1/1/2001
Senate District 47 Sen. John Hertel, Moore Qualifications (if required): none specified	Elected	1/1/2001
Senate District 48 Sen. Daryl Toews, Lustre Qualifications (if required): none specified	Elected	1/1/2001
Senate District 49 Sen. Linda J. Nelson, Medicine Lake Qualifications (if required): none specified	Elected	1/1/2001
Senate District 50 Sen. Walter L. McNutt, Sidney Qualifications (if required): none specified	Elected	1/1/2001
State Auditor Auditor Mark O'Keefe, Helena Qualifications (if required): none specified	Elected	1/1/2001
Superintendent of Public Instruction Superintendent Nancy Keenan, Helena Qualifications (if required): none specified	Elected	1/1/2001
Supreme Court Justice #3 Mr. William E. Hunt, Sr., Helena Qualifications (if required): none specified	Elected	1/1/2001