

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

AGRICULTURE, Department of, Title 4

4-14-128 Notice of Proposed Amendment - State Grain Laboratory Fees. No Public Hearing Contemplated. 1008-1012

COMMERCE, Department of, Title 8

8-119-8 (Montana Promotion Division) Notice of Proposed Amendment - Tourism Advisory Council. No Public Hearing Contemplated. 1013-1015

EDUCATION, Title 10

10-57-222 (Board of Public Education) Notice of Public Hearing on Proposed Adoption - Substantial and Material Non-Performance of a Contract of Employment. 1016-1018

ENVIRONMENTAL QUALITY, Department of, Title 17

(Board of Environmental Review)

17-158 (Water Quality) Notice of Public Hearing on Proposed Adoption and Amendment - Water Use Classifications - Numeric Nutrient Standards - Definitions - Incorporations by Reference. 1019-1029

ENVIRONMENTAL QUALITY, Continued

17-159 (Air Quality) Notice of Public Hearing on Proposed Amendment - Definition of Major Source in the Air Quality Operating Permit Rules. 1030-1032

17-160 (Air Quality) Notice of Public Hearing on Proposed Adoption - Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants. 1033-1038

CORRECTIONS, Department of, Title 20

20-7-26 Amended Notice of Public Hearing on Proposed Amendment, Adoption and Repeal - Youth Placement Committees. 1039-1040

LABOR AND INDUSTRY, Department of, Title 24

8-64-27 (Board of Veterinary Medicine) Notice of Proposed Amendment - Licensure of Out-of-State Applicants (Endorsement). No Public Hearing Contemplated. 1041-1043

24-11-155 Notice of Public Hearing on Proposed Amendment and Adoption - Unemployment Insurance Benefits Matters. 1044-1055

REVENUE, Department of, Title 42

42-2-689 (Board of Review) Notice of Public Hearing on Proposed Adoption - One-stop Licensing Program Administered by the Department of Revenue on Behalf of the Board of Review. 1056-1059

42-2-690 Notice of Public Hearing on Proposed Adoption - Exemptions, Reduced Tax Rates, and Credits for Energy Facilities. 1060-1064

RULE SECTION

ADMINISTRATION, Department of, Title 2

(State Compensation Insurance Fund)
Corrected Notice of Repeal - Premium Rates. 1065-1066

EDUCATION, Title 10

NEW (Superintendent of Public Instruction)
AMD Cooperative Driver Testing Program - Traffic Education. 1067-1071

FISH, WILDLIFE AND PARKS, Department of, Title 12

(Fish, Wildlife and Parks Commission)

AMD	Refunding of the 2-day Resident Fishing License.	1072
AMD	Fishing Contest Regulations.	1073-1083
NEW	Use of Snowmobiles on Open, Public Water.	1084-1088

ENVIRONMENTAL QUALITY, Department of, Title 17

	(Board of Environmental Review) (Water Quality) Corrected Notice of Amendment - Surface Water Quality.	1089-1090
AMD	(Underground Storage Tanks) Operating Permits or Compliance Plans and Compliance Inspections.	1091

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

	Corrected Notice of Adoption - Minimum Standards for Mental Health Centers.	1092-1093
--	---	-----------

REVENUE, Department of, Title 42

NEW	Exemptions, Reduced Tax Rates, and Credits	
AMD	for Energy Facilities.	1094-1095
AMD	Interest Charges for Late Filed and Late Paid Penalties.	1096-1098
AMD	Montana Appraisal Plan Rules.	1099

SPECIAL NOTICE AND TABLE SECTION

	Function of Administrative Rule Review Committee.	1100-1101
	How to Use ARM and MAR.	1102
	Accumulative Table.	1103-1113

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 4.13.1001A)	AMENDMENT
relating to state grain)	
laboratory fees)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On May 11, 2002 the Montana Department of Agriculture proposes to amend the above stated rule relating to state grain laboratory fees.

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 April 25, 2002 to advise us of the nature of the accommodation that you need. Please contact Will Kissinger at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TTY: (406) 444-4687; Fax: (406) 444-9442; or E-mail: agr@state.mt.us.

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

4.13.1001A GRAIN FEE SCHEDULE (1) Effective date of this rule is ~~October 25, 1996~~ July 1, 2002.

(2) and (2)(a) remain the same.

(b) The regular hourly rate for travel time and stand-by fee is \$15 16 per hour per individual assessed in half-hour intervals.

~~(c) Regular hourly rate for travel time in connection with sampling and grading of 10 or more railcars within 125 road miles of the state grain laboratory will not be charged Monday through Friday 8:00 a.m. to 5:00 p.m. All other hours will be charged at the overtime rate listed below.~~

(d) (c) Overtime and holiday hourly rate is \$22.50 23.50 per hour per individual assessed except that before or for a continuation of a regular work day, actual overtime hours will be charged.

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

(i) remains the same.

~~(ii) Mileage fees in connection with sampling and grading of 10 or more railcars within 125 road miles of the state grain laboratory will not be charged Monday through Friday 8:00 a.m. to 5:00 p.m. All other mileage will be charged at the mileage rate listed above.~~

(iii) remains the same, but is renumbered (ii).

- (g) through (j) remain the same, but are renumbered (f) through (i).
- (3) through (3)(b) remain the same.
- (i) Level one official sampling service when the state grain laboratory furnishes the sampling crew . . . \$20.00 21.00
- (ii) Level two official sampling service when the state grain laboratory furnishes a licensed sampler to write identification tickets, supervise elevator employees while sampling and seal samples for delivery to the state grain laboratory \$15.00 16.00
- (iii) Official lot reinspection based on new sample (~~original numerical grade sustained~~) - all regular fees assessed.
- ~~(iv) Official lot reinspection based on new sample (original numerical grade changed) - mileage, travel time applies when applicable and sampling only fee assessed. No grade fee assessed.~~
- (c) Sampling only (does not include grade) - bulk, boxcar, hopper car or truck/trailer, per request, (all grains). \$8.00 9.00
- (d) through (f) remain the same.
- (i) grade only. \$7.00 8.00
- (ii) reinspection based on file sample (original numerical grade sustained) - regular fee assessed . \$7.00 8.00
- (iii) through (g) remain the same.
- (i) near infrared transmittance (NIRT). . . . \$4.50 5.50
- (ii) protein retest - (original protein test sustained) \$4.50 5.50
- (iii) through (h) remain the same.
- (i) Malting barley analysis, includes actual percent of plump barley, skinned and broken kernels, and thin barley, per request. \$4.00 5.00
- (j) Vomitoxin (DON) per qualitative analysis test. \$23.50
- (j) remains the same, but is renumbered (k).
- (i) remains the same.
- (4) through (4)(c) remain the same.
- (i) bulk samples from boxcars, hopper cars, truck/trailers \$8.00 9.00
- (ii) through (d) remain the same.
- (i) field run \$12.00 13.00
- (ii) other than field run \$10.00 11.00
- (e) remains the same.
- (i) Reinspection of official lot ~~with original numerical grade sustained~~ - all regular fees assessed.
- ~~(ii) Official lot reinspection with original numerical grade - changed mileage, travel time assessed when applicable and sampling only fee assessed. No grade fee assessed.~~
- ~~(iii)~~ (ii) Reinspection of file sample with original numerical grade sustained - regular fee assessed either \$12.00 13.00 or \$10.00 11.00
- (iv) remains the same, but is renumbered (iii).
- (f) remains the same.
- (5) through (5)(b) remain the same.

- (i) Level one sampling service fee when the state grain laboratory furnishes the sampling crew~~.\$20.00~~ 21.00
- (ii) Level two sampling service fee when the state grain laboratory furnishes a licensed sampler to write identification tickets, supervise elevator employees while sampling and seal samples for delivery to the state grain laboratory~~.\$15.00~~ 16.00
- (iii) Lot reinspection (~~original numerical grade sustained~~) - all regular fees assessed.
- ~~(iv) Lot reinspection (original numerical grade changed) mileage, travel time applies when applicable and sampling only fee assessed. No grade fee assessed.~~
- (c) Sampling only (does not include grade) - bulk, boxcar, hopper car or truck/trailer, per request, (all grains) ~~\$8.00~~ 9.00
- (d) and (e) remain the same.
- (f) Submitted Montana specialty crop grades, (unless specifically listed), per grade ~~\$7.00~~ 8.00
- (g) remains the same.
- (i) processed ~~\$7.00~~ 8.00
- (ii) field run ~~\$12.00~~ 13.00
- (h) Submitted hulless or hulless waxy barley grades, (~~includes oven moisture~~), per grade~~.\$11.00~~ 12.00
- (i) through (i)(ii) remain the same.
- (j) remains the same.
- (i) non-official NIRT, (e.g., kamut) ~~\$4.50~~ 5.50
- (ii) Kjeldahl method (e.g., malting barley). ~~\$7.00~~ 8.00
- (iii) and (iv) remain the same.
- ~~(k) Moisture tests (oven), per sample \$4.00~~
- (l) remains the same, but is renumbered (k).
- (i) germination, 48 hour hydrogen peroxide ~~or 72~~ hour blotter test per determination ~~\$6.00~~ 7.00
- (ii) chit determination, per determination . ~~\$7.00~~ 8.00
- ~~(iii) variety identification, per sample \$4.00~~
- ~~(m) (l) Falling numbers determination, per~~ determination ~~\$10.00~~ 11.00
- ~~(n) (m) Oil, per determination \$10.00~~ 11.00
- (o) remains the same, but is renumbered (n).

AUTH: 80-4-721, MCA
 IMP: 80-4-403, MCA

REASON: The purpose of the proposed rule amendment is to increase the revenue and therefore the financial stability of the State Grain Laboratory. The State Grain Laboratory, located in Great Falls, is Montana's federally designated official grain grading, inspection, and sampling laboratory. As such, it is essential to the efficient marketing of Montana's grain, both domestically and internationally. Montana's grain industry relies on it for the only source of federally supervised grain inspection services in Montana.

The State Grain Laboratory does not generate sufficient revenue from existing user fees to continue operation. To

address the laboratory's dire financial situation, Director Ralph Peck appointed a Task Force consisting of members from Montana's farm organizations, grain trade, and legislature. The Task Force met January 23, 2002 during which it reviewed options and potential funding solutions.

The Task Force concurred on a comprehensive plan for maintaining the fiscal viability of the State Grain Laboratory. The Task Force unanimously recommended, as part of a long-term funding solution, that the laboratory's user fees be increased by \$1.00 per general service or analysis provided by the laboratory (the last fee increases occurred in 1991). The Task Force also recommended that a 10-car sampling fee reduction that was adopted in 1998 be rescinded. At that time, the laboratory lowered fees for official sampling and grading wherein no travel time or mileage charge fees were assessed when 10 or more railcars were officially sampled. The original rationale for lowering these fees was to provide an incentive for grain companies to increase the number of samples sent into the laboratory. However, the laboratory has not received a significant increase in the number of samples as a result of lowering these fees.

This rule amendment proposal, intended to address the long-term revenue needs of the State Grain Laboratory, is consistent with the recommendations of the Task Force.

Based on fiscal year 2001 data, it is estimated that the proposed fee increases will increase the State Grain Laboratory's revenue by \$41,546 per year, and affect 2,250 users of the laboratory's services.

4. Concerned persons may submit their data, views or arguments concerning this proposed amendment in writing to Will Kissinger at the 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. Any comments must be received no later than May 9, 2002.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Will Kissinger at the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TTY: (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 May 9, 2002.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; 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 2,760 based on 27,600 farmers per Montana Agricultural Statistics Service data.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, 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. All department rule making notices and adoptions may be reviewed at the Department of Agriculture's website at www.agr.state.mt.us.

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 April 1, 2002.

BEFORE THE MONTANA PROMOTION DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 8.119.101) AMENDMENT
pertaining to the Tourism)
Advisory Council)

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 11, 2002, the Montana Promotion Division proposes to amend the above-stated rule.

2. The 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 5:00 p.m., on April 29, 2002, to advise us of the nature of the accommodation that you need. Please contact Megan Morris, Montana Promotion Division, 1424 Ninth Avenue, PO Box 200533, Helena, Montana 59620-0533; telephone (406) 444-2669; facsimile (406) 444-1800; TDD (406) 444-2978; Montana Relay 1-800-253-4091; e-mail to mmorris@state.mt.us.

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

8.119.101 TOURISM ADVISORY COUNCIL (1) will remain the same.

(2) The tourism advisory council hereby incorporates by reference the guide entitled "Regulations and Procedures for Regional/CVB Tourism Organizations, ~~June 2001~~ February 2002," setting forth the regulations and procedures pertaining to the distribution of lodging facility use tax revenue. The guide is available for public inspection during normal business hours at the Montana ~~Travel Promotion and Development~~ Division, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620. Copies of the guide are available on request.

(3) Distribution of funds to regional nonprofit tourism corporations and to nonprofit convention and visitors' bureaus is contingent upon compliance with the "Regulations and Procedures for Regional/CVB Tourism Organizations, ~~June 2001~~ February 2002."

AUTH: Sec. 2-15-1816, MCA
IMP: Sec. 2-15-1816, MCA

REASON: It is reasonably necessary to amend this rule to provide clarification because the "2002 Regulations and

Procedures for the Regional/CVB Tourism Organizations" have been revised.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Megan Morris, Montana Promotion Division, Department of Commerce, 1424 Ninth Avenue, PO Box 200533, Helena, Montana 59620-0533, by facsimile to (406) 444-1800, or by email to mmorris@state.mt.us to be received no later than 5:00 p.m., May 9, 2002.

5. If persons who are directly affected by the proposed amendment wish to present their data, views or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit the request along with any comments they have to Megan Morris, Montana Promotion Division, Department of Commerce, 1424 Ninth Avenue, PO Box 200533, Helena, Montana 59620-0533, by facsimile to (406) 444-1800, or by email to mmorris@state.mt.us to be received no later than 5:00 p.m., May 9, 2002.

6. If the Division receives requests for a public hearing on the proposed amendment from either 10 percent or 25 whichever is less, of those persons who are directly affected by the proposed amendment, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 20 based on 10 Convention and Visitor Bureaus, six Tourism Regions and at least 184 potential applicants for grants of accommodations tax funds.

7. The Montana Promotion Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Division. 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 Montana Promotion Division administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Montana Promotion Division, 1424 Ninth Avenue, PO Box 200533, Helena, Montana 59620-0533 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.

MONTANA PROMOTION DIVISION
DEPARTMENT OF COMMERCE

By: /s/ MARK A. SIMONICH
MARK A. SIMONICH, DIRECTOR
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State April 1, 2002.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING
proposed adoption of) ON PROPOSED ADOPTION
new rule I relating to)
substantial and material)
non-performance of a)
contract of employment)

TO: All Concerned Persons

1. On May 2, 2002 at 9:00 a.m. a public hearing will be held in the main conference room of the Office of Higher Education, 2500 Broadway, Helena, Montana, to consider the adoption of a rule relating to substantial and material non-performance of a contract of employment.

2. The Board of Public Education 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 Board of Public Education no later than 5:00 p.m. on April 19, 2002 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, Executive Secretary, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail, smeloy@bpe.montana.edu.

3. The proposed new rule provides as follows:

NEW RULE I SUBSTANTIAL AND MATERIAL NON-PERFORMANCE

(1) A certified staff member commits a violation of 20-4-110, MCA, if, after signing a binding contract of employment with a Montana school district, the certified staff member substantially and materially breaches such contract without good cause.

(2) "Good cause" shall be determined by the board on a case-by-case basis. The following are examples of good cause:

(a) substantial hardship to the certified staff member's family due to loss of employment by the spouse of the certified staff member that necessitates a move for financial reasons;

(b) illness of a family member of the certified staff member that necessitates a move for purposes of providing for, caring for, or tending to the ill family member; or

(c) intolerable working conditions, judged on the same basis as constructive discharge under Montana law.

(3) Certified staff members violating 20-4-110(1)(g), MCA shall be penalized according to the following guidelines:

(a) a first violation committed not more than 30 calendar days prior to the beginning of the school year may result in a sanction not to exceed placement of a letter of reprimand in the certified staff member's public record

certification file;

(b) a first violation committed on or after school starts shall result in a sanction ranging from placement of a letter of reprimand in the certified staff member's public record certification file to temporary suspension of the certified staff member's certificate for not more than 30 days; and

(c) a second or subsequent violation shall result in a sanction ranging from a temporary suspension of the certified staff member's certificate to revocation of the certificate.

(4) In considering the sanction, if any, to impose for a violation, the board will consider the following:

(a) the length of prior notice, if any, provided to the employing board by the certified staff member;

(b) the arrangements made and resources provided by the certified staff member to ensure continuing instruction to pupils;

(c) the difficulties faced by the employing district in recruiting a suitable replacement;

(d) the impact of the certified staff member's breach of contract on the district's compliance with accreditation standards; and

(e) other hardships suffered by the employing district as a result of the certified staff member's breach of contract.

(5) This rule provides guidelines only and shall not be construed to either require or to prohibit the board from exercising its discretion in overseeing discipline of certificate holders.

AUTH: Sec. 20-2-114, 20-2-121, MCA
IMP: Sec. 20-2-121, 20-4-110, MCA

4. Statement of Reasonable Necessity: The Board of Public Education is proposing to adopt this rule to clarify when the Board of Public Education may take action against the certificate of a teacher, specialist or administrator for substantial and material nonperformance of a contract with a Board of Trustees without good cause pursuant to 20-4-110, MCA.

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 by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, by fax to (406) 444-0847 or by e-mail to smeloy@bpe.montana.edu and must be received no later than 5:00 p.m. on May 9, 2002.

6. Steve Meloy has been designated to preside over and conduct the hearing.

7. The Board of Public Education 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 of the Board of Public Education. Such written request may be mailed or delivered to the Board of Public Education, P.O. Box 200601, 2500 Broadway, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847, e-mailed to smeloy@bpe.montana.edu, or may be made by completing a request form at any rules hearing held by the Board of Public Education.

8. The bill sponsor requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Kirk Miller
Dr. Kirk Miller, Board Chair
Board of Public Education

/s/ Steve Meloy
Steve Meloy, Executive Secretary
Rule Reviewer
Board of Public Education

Certified to the Secretary of State April 1, 2002.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING ON
of new rules I through X)	PROPOSED ADOPTION AND
pertaining to water use)	AMENDMENT
classifications and numeric)	
nutrient standards; and the)	
amendment of ARM 17.30.602 and)	
17.30.619 pertaining to)	(WATER QUALITY)
definitions and incorporations)	
by reference)	

TO: All Concerned Persons

1. On May 13, 2002, at 10:00 a.m., the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., May 1, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386 or email "ber@state.mt.us".

3. The proposed new rules provide as follows:

RULE I WATER-USE CLASSIFICATIONS AND DESCRIPTIONS -
CONSTRUCTED DITCHES, SEASONAL AND SEMI-PERMANENT LAKES AND
EPHEMERAL STREAMS (1) The water-use classifications for

waters in constructed irrigation ditches and drain ditches that have return flows to state waters and the water-use classification for waters in ephemeral streams and seasonal and semi-permanent lakes and ponds are as follows:

- (a) waters in constructed irrigation and drain ditches that contain controlled flows of surface water and are de-watered during the non-irrigation season. . . . D-1
- (b) waters in constructed irrigation and drain ditches that contain controlled flows of surface water mixed with ground water and are periodically de-watered. . . D-2
- (c) ephemeral streams including ephemeral streams with flows that are periodically augmented by discharges from point sources E-1
- (d) ephemeral streams with flows that are augmented by continuous discharges from point sources. . . E-2
- (e) seasonal lakes and ponds E-3
- (f) semi-permanent lakes and ponds, not including reservoirs, that have an electrical

conductivity (EC) less than 7,000 µS/cm. E-4

(g) semi-permanent lakes and ponds, not including reservoirs, that seasonally have an EC equal to or greater than 7,000 µS/cm E-5

(h) streams with low or sporadic flow that, because of natural hydro-geomorphic and hydrologic conditions, are not able to support fish F-1

(2) This rule does not classify any specific water body. Prior to a specific water body being classified in ARM 17.30.607 through 17.30.614 under one of the water-use classifications identified in (1)(a) through (h) and before the U.S. environmental protection agency's approval of the water body's revised classification, a use attainability analysis must be conducted in accordance with 40 CFR 131.10(g), (h) and (j).

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

RULE II D-1 CLASSIFICATION STANDARDS (1) Waters classified D-1 are to be maintained suitable for agricultural purposes and secondary contact recreation.

(2) No person may violate the following specific water quality standards for waters classified D-1:

(a) the standards in WQB-7 for carcinogens and parameters with a bioconcentration factor greater than 300 apply;

(b) the water quality shall be maintained of sufficient quality that all designated uses of any downstream receiving waters will be fully maintained;

(c) when the daily maximum water temperature is greater than 60°F, no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10 percent of the samples during any 30-day period may not exceed 2,000 fecal coliforms per 100 ml.

(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

RULE III D-2 CLASSIFICATION STANDARDS (1) Waters classified D-2 are to be maintained suitable for agricultural purposes and secondary contact recreation. Because of conditions resulting from flow regulation, maintenance of the ditch or geomorphological and riparian habitat conditions, the quality of these waters is marginally suitable for aquatic life.

(2) No person may violate the following specific water quality standards for waters classified D-2:

(a) the acute aquatic life standards in WQB-7 apply, except for the ammonia standards, which do not apply;

(b) the standards in WQB-7 for carcinogens and parameters with a bioconcentration factor greater than 300 apply;

(c) the water quality shall be maintained of sufficient quality that all designated uses of any downstream receiving waters will be fully maintained;

(d) when the daily maximum water temperature is greater than 60°F, no permitted discharge may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10 percent of the samples during any 30-day period may not exceed 2,000 fecal coliforms per 100 ml.

(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

RULE IV E-1 CLASSIFICATION STANDARDS (1) Waters classified E-1 are to be maintained suitable for agricultural purposes, secondary contact recreation and wildlife.

(2) No person may violate the following specific water quality standards for waters classified E-1:

(a) the standards in WQB-7 for carcinogens and parameters with a bioconcentration factor greater than 300 apply;

(b) when the natural water quality exceeds the standards in WQB-7 identified in (2)(a), the natural water quality may not be made worse;

(c) the water quality shall be maintained of sufficient quality that all designated uses of any downstream receiving waters will be fully maintained;

(d) when the daily maximum water temperature is greater than 60°F, no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10 percent of the samples during any 30-day period may not exceed 2,000 fecal coliforms per 100 ml.

(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

RULE V E-2 CLASSIFICATION STANDARDS (1) Waters classified E-2 are to be maintained suitable for agricultural purposes, secondary contact recreation, and wildlife. Because of habitat, low flow, hydro-geomorphic and other physical conditions these waters are marginally suitable for aquatic life.

(2) No person may violate the following specific water quality standards for waters classified E-2:

(a) the acute aquatic life standards in WQB-7 apply, except for the ammonia standards, which do not apply;

(b) the standards in WQB-7 for carcinogens and parameters with a bioconcentration factor greater than 300 apply;

(c) when the natural water quality exceeds the standards in WQB-7 identified in (2)(a) and (b), the natural water quality may not be made worse;

(d) the water quality shall be maintained of sufficient quality that all designated uses of any downstream receiving waters will be fully maintained;

(e) when the daily maximum water temperature is greater than 60°F, no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10 percent of the samples during any 30-day period may not exceed 2,000 fecal coliforms per 100 ml.

(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

RULE VI E-3 CLASSIFICATION STANDARDS (1) Waters classified E-3 are to be maintained suitable for agricultural purposes, secondary contact recreation, and wildlife.

(2) No person may violate the following specific water quality standards for waters classified E-3:

(a) the standards in WQB-7 for carcinogens and parameters with a bioconcentration factor greater than 300 apply;

(b) when the natural water quality exceeds the standards in WQB-7 identified in (2)(a), the natural water quality may not be made worse;

(c) when the daily maximum water temperature is greater than 60°F, no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10 percent of the samples during any 30-day period may not exceed 2,000 fecal coliforms per 100 ml;

(d) the water quality shall be maintained of sufficient quality that all designated uses of any downstream receiving waters will be fully maintained.

(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

RULE VII E-4 CLASSIFICATION STANDARDS (1) Waters classified E-4 are to be maintained suitable for aquatic life, agricultural purposes, secondary contact recreation, and wildlife.

(2) No person may violate the following specific water quality standards for waters classified E-4:

(a) the acute and chronic aquatic life standards in WQB-7 apply;

(b) the standards in WQB-7 for carcinogens and parameters with a bioconcentration factor greater than 300 apply;

(c) when the natural water quality exceeds the standards in WQB-7 identified in (2)(a) and (b), the natural water quality may not be made worse;

(d) the water quality shall be maintained of sufficient quality that all designated uses of any downstream receiving waters will be fully maintained;

(e) when the daily maximum water temperature is greater than 60°F, no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10 percent of the samples during any 30-day period may not exceed 2,000 fecal coliforms per 100 ml.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

RULE VIII E-5 CLASSIFICATION STANDARDS (1) Waters classified E-5 are to be maintained suitable for agricultural purposes, secondary contact recreation, and wildlife.

(2) No person may violate the following specific water quality standards for waters classified E-5:

(a) the standards in WQB-7 for carcinogens and parameters with a bioconcentration factor greater than 300 apply;

(b) when the natural water quality exceeds the standards in WQB-7 identified in (2)(a), the natural water quality may not be made worse;

(c) the water quality shall be maintained of sufficient quality that all designated uses of any downstream receiving waters will be fully maintained;

(d) when the daily maximum water temperature is greater than 60°F, no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10 percent of the samples during any 30-day period may not exceed 2,000 fecal coliforms per 100 ml.

(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

RULE IX F-1 CLASSIFICATIONS STANDARDS (1) Waters classified F-1 are to be maintained suitable for secondary contact recreation, wildlife and aquatic life not including fish.

(2) No person may violate the following specific water quality standards for waters classified F-1:

(a) the acute aquatic life standards in WQB-7 apply, except for the ammonia standards, which do not apply;

(b) the standards in WQB-7 for carcinogens and parameters with a bioconcentration factor greater than 300 apply;

(c) when the natural water quality exceeds the standards in WQB-7 identified in (2)(a) and (b), the natural water quality may not be made worse;

(d) the water quality shall be maintained of sufficient quality that all designated uses of any downstream receiving water will be fully maintained;

(e) when the daily maximum water temperature is greater than 60°F no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10 percent of the samples during any 30-day period may not exceed 2,000 fecal coliforms per 100 ml.

(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The Board is proposing the adoption of new rules I through IX in response to its statutory mandate to create water-use classifications for waters with low or sporadic flow that do not support salmonid or nonsalmonid fish. See 75-5-301(1), MCA. The adoption of new rules I through IX is necessary because existing rules classify all state surface waters as capable of supporting all of the "fishable/swimmable" uses promoted under the federal Clean Water Act (CWA) even though some of these waters do not support these uses due to periodic de-watering or sporadic flows. As a result of the current classification system, point source discharges to surface waters that are not capable of supporting all of their designated uses are required to meet water quality standards intended to protect uses that do not exist. In order to eliminate the imposition of unnecessarily stringent water quality standards in waters that are not capable of supporting a fishery or drinking water supplies, the Board is proposing to adopt water-use classifications and water quality standards that protect a limited number of beneficial uses for constructed ditches, ephemeral streams, seasonal and semi-permanent ponds and lakes, and sporadic flow streams. The approach taken by the Board includes various types of surface waters that are not capable of supporting all of the "fishable/swimmable" uses promoted under the CWA. The Board is not proposing to adopt a single classification for all of these waters, because there are differences in the beneficial uses supported by these waters that warrant different water quality standards.

RULE X NUMERIC NUTRIENT STANDARDS (1) No person may violate the numeric water quality standards identified below.

(2) The numeric nutrient and standing crop of benthic algae water quality standards for the mainstem Clark Fork River from below the Warm Springs Creek confluence (N46°11'17", W112°46'03") to the confluence with the Flathead River (N47°21'45", W114°46'43") are as follows:

(a) In the mainstem Clark Fork River from below the Warm Springs Creek confluence (N46°11'17", W112°46'03") to the Reserve Street Bridge in Missoula (N46°52'52", W114°02'21") the numeric water quality standards for Total Nitrogen, Total Phosphorus, and benthic algal chlorophyll *a*, applicable from June 21 to September 21, are as follows:

(i)	<u>Parameter</u>	<u>Concentration</u>
	Total Phosphorus as P	20 µg/L
	Total Nitrogen as N	300 µg/L
(ii)	<u>Parameter</u>	<u>Density</u>
	(Summer mean) - Benthic algal chlorophyll <i>a</i>	100 mg/square meter
	(Maximum) - Benthic algal chlorophyll <i>a</i>	150 mg/square meter

(b) In the Clark Fork River from the Reserve Street Bridge in Missoula (N46°52'52", W114°02'21") to the confluence with the Flathead River (N47°21'45", W114°46'43") the numeric water quality standards for Total Nitrogen, Total Phosphorus, and benthic algal chlorophyll *a*, applicable from June 21 to September 21, are as follows:

(i)	<u>Parameter</u>	<u>Concentration</u>
	Total Phosphorus as P	39 µg/L
	Total Nitrogen as N	300 µg/L
(ii)	<u>Parameter</u>	<u>Density</u>
	(Summer mean) - Benthic algal chlorophyll <i>a</i>	100 mg/square meter
	(Maximum) - Benthic algal chlorophyll <i>a</i>	150 mg/square meter

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The Board is proposing the adoption of new rule X in order to establish numeric water quality standards for nutrients and standing crop of benthic algae in portions of the Clark Fork River. The adoption of new rule X is necessary to provide a uniform method of determining permit limits on the Clark Fork that is consistent with the in-stream nutrient targets approved by EPA as a TMDL for four point sources on the Clark Fork under the Voluntary Nutrient Reduction Program (VNRP). Under existing rules, nutrient limits for other point source discharges that are not subject to the VNRP/TMDL nutrient limits are established on a case-by-case basis using a narrative standard prohibiting "undesirable aquatic life." The adoption of the proposed numeric standards will eliminate any potential conflicts between the in-stream targets established for four point sources under the VNRP/TMDL and permit limits for other point source discharges to the Clark Fork. Alternatively, the Board is not adopting numeric values that are more or less stringent than the in-stream targets of the VNRP/TMDL, because that would unfairly place the burden of reducing and maintaining nutrient levels in the Clark Fork on

the permittees that would be subject to the more stringent nutrient targets of the VNRP.

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

17.30.602 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions given in 75-5-103, MCA:

(1) "Acutely toxic conditions" means conditions lethal to aquatic organisms passing through the mixing zone. Lethality is a function of the magnitude of pollutant concentrations and the duration of organism exposure to those concentrations.

(2) "Bioconcentrating parameters" means the parameters listed in department Circular WQB-7 which have a bioconcentration factor greater than 300.

(3) "Carcinogenic parameters" means the parameters categorized as carcinogens in department Circular WQB-7.

(4) "Chlorophyll a" means the mass of chlorophyll a pigment after correction for phaeophytins.

(4) through (19) remain the same, but are renumbered (5) through (20).

(21) "Phaeophytins" means the degradation products of chlorophyll.

(20) and (21) remain the same, but are numbered (22) and (23).

(24) "Seasonal lake or pond" means a natural depression in the land surface that periodically holds water from precipitation or snow and ice melt in the immediate watershed.

(25) "Secondary contact recreation" means activities in or on the water where the potential for immersion or ingestion of water is low, such as wading or boating.

(22) remains the same, but is renumbered (26).

(27) "Semi-permanent lake or pond" means a natural depression in the land surface, not including reservoirs, that receives groundwater in addition to precipitation runoff from the immediate watershed, and occasionally goes dry.

(23) through (26) remain the same, but are renumbered (28) through (31).

(32) "Total nitrogen" means the total nitrogen concentration (as N) of unfiltered water. This may be determined by direct methods, or derived as the sum of the soluble (as N) and non-soluble (as N) nitrogen fractions. The filter used to separate the soluble and non-soluble fractions must be 0.45 μ m.

(33) "Total phosphorus" means the total phosphorus concentration (as P) of unfiltered water.

(27) through (29) remain the same, but are renumbered (34) through (36).

(37) "Use attainability analysis" means a scientific assessment and analysis of the factors affecting the attainment of a use(s). Information that may be used include

chemical, physical and biological data, as well as photo documentation and comparison to reference conditions, that are of sufficient detail to accurately portray the level and potential level of use support of a waterbody. The use attainability analysis is required by the US EPA according to 40 CFR 131.10(g), (h) and (j).

(38) "WQB-7" means the department circular that is adopted and incorporated by reference in ARM 17.30.619 and is entitled "Montana Numeric Water Quality Standards." This circular establishes water quality standards for toxic, carcinogenic, bioconcentration, nutrient, radioactive and harmful parameters.

(30) and (31) remain the same, but are renumbered (39) and (40).

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

The amendment of ARM 17.30.602 is necessary in order to define the parameters for which numeric standards are being adopted in new rule X and to define terms used in new rules I through IX, which include: "WQB-7", "seasonal lake or pond", "secondary contact recreation", "semi-permanent lake or pond", and "use attainability analysis." Defining the parameters for which numeric standards are being adopted is necessary because the standards will vary depending upon the precise definition of these parameters. Alternatively, the Board has decided not to leave these terms undefined, as that may result in the inconsistent application of the numeric standards. Defining "WQB-7" is necessary to inform the reader that the term refers to a document listing Montana's numeric water quality standards. In addition, defining the terms "seasonal lake or pond", "secondary contact recreation", "semi-permanent lake or pond" and "use attainability analysis" is necessary because those terms have a specific meaning in the context of water quality regulations and programs. The Board has rejected the alternative of not adopting these definitions because without them the rules would be unclear and subject to various interpretations.

17.30.619 INCORPORATION BY REFERENCE (1) through (1)(f) remain the same.

(g) 40 CFR 131.10(g), (h) and (j) (2000), which establishes criteria and guidelines for conducting a use attainability analysis.

(2) remains the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

REASON: Prior to classifying any water under the water use classifications, EPA requires a "use attainability analysis" for the removal of a beneficial use. The incorporation by reference is necessary to ensure that a "use attainability

analysis," in support of reclassifying a specific water body under the proposed new rules I through IX, is conducted in a manner consistent with EPA's regulations. Failure to perform a "use attainability analysis" according to EPA's regulations will likely result in EPA's refusal to approve a specific water body's reclassification.

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 the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at "ber@state.mt.us" and must be received no later than 5:00 p.m., May 20, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

6. Thomas G. Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

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

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

BOARD OF ENVIRONMENTAL REVIEW

By: JOSEPH W. RUSSELL
JOSEPH W. RUSSELL, M.P.H.,
Chairperson

Reviewed by:

JOHN F. NORTH
JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State, April 1, 2002.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING
of ARM 17.8.1201 pertaining to)	ON PROPOSED AMENDMENT
the definition of major source)	
in the air quality operating)	(AIR QUALITY)
permit rules)	

TO: All Concerned Persons

1. On May 30, 2002, at 1:30 p.m. the Board of Environmental Review will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., May 20, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386 or email "ber@state.mt.us".

3. The proposed amendment provides as follows, stricken matter interlined, deleted matter underlined:

17.8.1201 DEFINITIONS As used in this subchapter, unless indicated otherwise, the following definitions apply:

(1) through (23)(b)(xxvi) remain the same.

~~(xxvii) all other stationary source categories regulated by a standard promulgated under sections 7411 or 7412 of the FCAA, but only with respect to those air pollutants that have been regulated for that category~~ any other stationary source category, which as of August 7, 1980, is being regulated under section 111 or 112 of the FCAA.

(c) through (33) remain the same.

AUTH: 75-2-217, MCA

IMP: 75-2-217, 75-2-218, MCA

REASON: On November 27, 2001, at 66 Federal Register 59161, the Environmental Protection Agency (EPA) amended the definition of "major source" contained in 40 CFR 70.2, which EPA uses to determine major source status under the Title V air quality operating permit program. The proposed amendment to ARM 17.8.1201(23) would conform the definition of "major source" in the state's Title V rules to the revised federal definition.

EPA's action deleted the requirement that states include fugitive emissions in determining major source status for sources in categories subject to standards under Section 111

or 112 of the federal Clean Air Act (FCAA) promulgated after August 7, 1980. Section 111 provides standards of performance for new stationary sources, and Section 112 provides for promulgation of emission standards for hazardous air pollutants.

EPA made this amendment in response to a petition by the National Mining Association challenging the previous requirement that fugitive emissions be counted for all sources in Section 111 or 112 categories, regardless of when those standards were promulgated. The basis for the challenge was that Section 302(j) of the FCAA requires EPA to conduct rulemaking to determine sources of fugitive emissions that must be included in determining major source status for sources subject to Section 111 or 112 standards promulgated after August 7, 1980, and EPA has not done that. The EPA regulation required inclusion of fugitive emissions for all sources subject to a standard under Section 111 or 112, regardless of when the standard was promulgated. The EPA amendment added the August 7, 1980, date to the regulation, so that fugitive emissions must be included in determining major source status only if the Section 111 or 112 standard applicable to the source was promulgated as of August 7, 1980.

EPA is not requiring states to make this amendment; EPA is allowing states to have more stringent rules requiring inclusion of fugitive emissions in determining major source status for sources subject to Section 111 or 112 standards, regardless of the date those standards were promulgated. However, Section 75-2-217(1), MCA, requires that the state Title V rules be consistent with the federal Clean Air Act and implementing regulations, and Section 75-2-217(2), MCA, states that the Montana Title V program applies to all sources of air pollutants subject to the federal Title V statutes. Therefore, it's necessary for the Board to conform its definition of "major source" to the comparable federal regulations.

The EPA amendments to the "major source" definition also deleted the phrase "but only with respect to those air pollutants that have been regulated for that category." This amendment was intended to conform the definitions of 40 CFR Part 70 to the corresponding provisions of EPA's New Source Review (NSR) regulations. EPA is requiring states to delete this phrase from their Title V program definition of "major source" to avoid inconsistencies under which a facility might be considered major under NSR regulations but not under Title V. If this occurred in a Title V permit application, a facility could avoid reporting information concerning emissions for which it is major under Title V but not major under the NSR regulations. In addition to the fact that the Clean Air Act of Montana requires that the state Title V rules be consistent with comparable federal regulations, if the state does not make this amendment, the state may be subject to federal sanctions.

4. Concerned persons may submit their data, views or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at "ber@state.mt.us", to be received no later than 5:00 p.m. June 7, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

5. Thomas G. Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

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

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

BOARD OF ENVIRONMENTAL REVIEW

BY: JOSEPH W. RUSSELL
JOSEPH W. RUSSELL, M.P.H.,
CHAIRPERSON

Reviewed by:

DAVID RUSOFF
David Rusoff, Rule Reviewer

Certified to the Secretary of State April 1, 2002.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF PUBLIC HEARING ON
of New Rule I pertaining to) PROPOSED ADOPTION
maintenance of air pollution)
control equipment for existing)
aluminum plants) (AIR QUALITY)

TO: All Concerned Persons

1. On May 23, 2002, at 10:30 a.m., a public hearing will be held in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., May 13, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email "ber@state.mt.us".

3. The proposed new rule provides as follows:

NEW RULE I MAINTENANCE OF AIR POLLUTION CONTROL EQUIPMENT FOR EXISTING ALUMINUM PLANTS (1) The department may not initiate an enforcement action for a violation of ARM 17.8.111, 17.8.334(2), or any emission standard, resulting from necessary scheduled maintenance of air pollution control equipment at an existing primary aluminum reduction plant, as defined in ARM 17.8.330, if:

(a) the maintenance event meets the following conditions:

(i) the maintenance event is conducted during the month of September;

(ii) the maintenance event will not cause uncontrolled PM-10 emissions to exceed normal operating emissions from reduction cells by more than 700 lbs. per 24-hour period as estimated with emission factors;

(iii) the air pollution control equipment maintenance is initiated between the hours of 9:00 a.m. MDT and 12:00 noon MDT and completed by 8:00 p.m. MDT;

(b) the owner or operator submitted, and the department approved, a maintenance plan pursuant to (2) through (5); and

(c) the owner or operator has complied with all requirements of this rule and the approved maintenance plan.

(2) When it is anticipated that shutdown, bypass, or operation at reduced efficiency of air pollution control equipment, for necessary scheduled maintenance of air pollution control equipment, may result in uncontrolled PM-10

emissions over normal operating emissions, prior department approval must be obtained for a maintenance plan that will be used to minimize uncontrolled PM-10 emissions over normal operating emissions. A written application for approval of a maintenance plan, or modifications to an existing approved maintenance plan, must be received by the department at least 45 days prior to the first occurrence of a maintenance event to which the plan applies, and must include the following:

(a) an explanation of the need for maintenance, the reasons the maintenance plan would be of greater benefit to public health, safety, and the environment than shutting down the source operation during the period, and the reasons the bypass or reduced efficiency could not be avoided through better scheduling for maintenance or through better operation and maintenance practices;

(b) identification of the specific air pollution control equipment to be maintained;

(c) a description of the character, amount, and duration of the air contaminants likely to be emitted during the maintenance period, and the estimated amount and duration of uncontrolled PM-10 emissions over normal operating emissions;

(d) a description of the specific procedures that will be used to minimize the length of the maintenance period, such as the use of overtime labor, contract services, and equipment;

(e) a description of the specific procedures that will be used to minimize uncontrolled PM-10 emissions over normal operating emissions during the scheduled maintenance event(s);

(f) citation of all permit requirements, statutes, and rules that might not be complied with during the maintenance event(s); and

(g) the expected date(s) of all maintenance events during which air pollution control equipment will be shut down, bypassed, or operated at reduced efficiency.

(3) Concurrent with submittal of a maintenance plan, public notice must be given as follows:

(a) the applicant shall publish a notice at least once in a newspaper of general circulation published in the geographical area in which the plant or equipment of the applicant is located;

(b) the public notice must include at least the following:

(i) a brief description of the maintenance plan;

(ii) the date(s) of the scheduled maintenance event(s);

(iii) the address and phone number of the premises at which interested persons may obtain further information or inspect or obtain a copy of the maintenance plan;

(iv) the name and address of the person at the department to whom public comments may be sent; and

(v) the date by which comments must be received, which may not be less than 20 days after the date of publication of the notice.

(c) the department shall post a copy of the maintenance plan on its web site.

(4) Within 20 days after the end of the public comment period, the department may approve a maintenance plan submitted to the department in conformance with this rule upon determining that:

(a) the plan will minimize emissions during the maintenance event(s) to the extent practicable;

(b) the maintenance event(s) will not pose a danger to public health, safety, and the environment; and

(c) compliance with the maintenance plan will produce equal or greater benefit to public health, safety, and the environment than shutdown and startup of the facility.

(5) The department may apply conditions to its approval of a maintenance plan. The department shall consider conditions that may affect the concentration of pollutants in the ambient air.

(6) When the department has approved a maintenance plan under this rule, the owner or operator shall notify the department at least 72 hours in advance of each scheduled maintenance event that may result in uncontrolled PM-10 emissions over normal operating emissions. Additional notification may be required:

(a) by permit condition; or

(b) by state implementation plan (SIP) requirement.

(7) The owner or operator of a facility shall report to the department, within 24 hours of occurrence, any deviation from a maintenance plan approved under this rule.

(8) An owner or operator with a maintenance plan approved under this rule shall submit to the department, no later than 45 days after each maintenance event covered by the plan, a written report specifying the date of the event and the amount of any uncontrolled PM-10 emissions over normal operating emissions during the event.

(9) The department may revoke or require modifications to a previously approved maintenance plan at any time by notifying the owner or operator in writing.

(10) Maintenance associated with a maintenance plan approved under this rule may not occur during any period in which an air pollution alert, air pollution warning, or air pollution emergency has been declared pursuant to the Montana emergency episode plan or any applicable county air pollution control program.

(11) Nothing in this rule shall be construed to allow an owner or operator to cause or contribute to violations of any federal or state ambient air quality standard.

AUTH: 75-2-111, MCA

IMP: 75-2-203, MCA

REASON:

Background

Columbia Falls Aluminum Company operates a primary aluminum reduction plant near Columbia Falls (herein, "plant"). The plant is equipped with air pollution control equipment, including ducts conveying exhaust to dry scrubbers. The air pollution control equipment requires periodic maintenance to keep it in good operating order. The failure to maintain the air pollution control equipment would eventually result in the failure of the equipment. The failure of the equipment would result in air pollution emissions from the plant that exceed those allowed and may create an unacceptable risk to public health.

The maintenance of the air pollution control equipment requires the plant to shut down the dry scrubbers and to bypass some of the dry scrubbers during the maintenance event. If the plant continues to operate during the shutdown of the dry scrubbers, the air pollution emissions from the plant may exceed those allowed by rules governing emissions of air pollutants, but would be substantially less than the emissions resulting from failure of the air pollution control equipment.

In the past, the plant has applied to the Board of Environmental Review (herein, "Board") for a variance from rules governing emissions of air pollutants so that the plant could maintain the air pollution control equipment while continuing to operate the plant. The process for obtaining such a variance is regulated by 75-2-212, MCA and ARM 17.8.120. The required procedures are time-consuming. The last variance requested by the plant was submitted to the Board on August 7, 2000, and was granted by the Board on October 27, 2000. The process required one extraordinary meeting of the Board and actions outside of normal time allowances in order to complete the variance process in time to allow the plant maintenance to be conducted.

The last variance granted by the Board imposed several conditions on the maintenance activity. The plant was allowed to maintain its air pollution control equipment during certain hours, only on days with no burning restrictions, when the wind speed was at least 5.6 miles per hour, during the dormant growing season but before the onset of winter inversions. Due to weather conditions, the plant was not able to finish the maintenance of air pollution control equipment during the time allowed by the variance. However, the plant was not required to request another variance from the Board because the plant shut down for unrelated reasons.

Proposed Rule

The proposed rule is intended to allow the plant to maintain air pollution control equipment while the plant is operating, without requiring the plant to apply for and receive a variance from the Board before each period of maintenance. The proposed rule imposes conditions on the maintenance that are similar to the conditions that have been

imposed in the past under the variance procedure of 75-2-212, MCA. For example, under the proposed rule the plant may maintain air pollution control equipment only during certain periods of time and during certain atmospheric conditions. In addition, the quantity of emissions is limited. Under the proposed rule, the plant must obtain approval of its maintenance plan from the Department of Environmental Quality. The plant must follow the variance procedure of 75-2-212, MCA for maintenance and other activities that do not satisfy the conditions required by the proposed rule.

The plant's installation of additional air pollution control equipment or redundant ductwork would be technically feasible. Such equipment would allow emissions to be treated by alternate air pollution control equipment during periods of maintenance of the primary air pollution control equipment. However, the installation of such equipment would require a significant capital expenditure.

The plant maintains air pollution control equipment during periods when the plant is shut down. The plant is currently shut down. However, for future maintenance needs, shutting down the plant to maintain the air pollution control equipment and then restarting the plant would be impractical. The shutdown and startup process is expensive and lengthy. It often takes four to six months after startup before processes within the reduction cells stabilize and aluminum is reliably produced. In addition, during shutdown and startup, the emissions of air pollutants by the plant are greater than the emissions during normal operations.

4. 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 the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386, or emailed to "ber@state.mt.us", no later than 5:00 p.m., May 30, 2002. To be guaranteed consideration, written comments must be postmarked on or before that date.

5. Thomas G. Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

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

grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386, emailed to "ber@state.mt.us," or may be made by completing a request form at any rules hearing held by the Board.

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

BOARD OF ENVIRONMENTAL REVIEW

BY: JOSEPH W. RUSSELL
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Reviewed by:

DAVID RUSOFF
David Rusoff, Rule Reviewer

Certified to the Secretary of State April 1, 2002.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the proposed)
amendment of ARM 20.9.101, 20.9.103,)
20.9.106, 20.9.110, 20.9.113,)
20.9.115, 20.9.116, 20.9.120,)
20.9.122; adoption of new rules I)
through VIII pertaining to Youth)
Placement Committees; and repeal)
of ARM 20.9.121)

AMENDED NOTICE OF
PUBLIC HEARING ON
PROPOSED AMENDMENT,
ADOPTION AND REPEAL

TO: All Concerned Persons

1. On March 14, 2002, the Department published a notice of public hearing at page 618 of the 2002 Montana Administrative Register, issue number 5, of the proposed amendment, adoption and repeal of the above-captioned rules. The Juvenile Corrections Division requested that the hearing date be changed because the parties involved in these rules will be unavailable. The Hearings Officer is also changed from Colleen White to Matthew Robertson. Therefore, the Department files this notice advising the public of the change to the hearing date and change in the Hearings Officer.

2. On May 2, 2002, at 9:00 a.m., a public hearing will be held in the first floor conference room of the Department of Corrections, 1539 11th Ave., Helena, Montana, to consider the proposed amendment, adoption and repeal of the above-stated rules.

3. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Corrections no later than 5:00 p.m. on April 25, 2002, to advise us of the nature of the accommodation that you need. Please contact Sherri Townsend, Department of Corrections, 1539 11th Ave., PO Box 201301, Helena, Montana 59620-1301; telephone 406-444-3910; fax 406-444-4920; e-mail stownsend@state.mt.us.

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 address listed in 6, and must be received no later than May 10, 2002.

5. Matthew Robertson, Legal Counsel, Department of Corrections, 1539 11th Ave., PO Box 201301, Helena, Montana 59620-1301, e-mail mrobertson@state.mt.us will preside over and conduct the hearing.

6. The Department of Corrections 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 community corrections, juvenile corrections, board of pardons and parole, private correctional facilities or general departmental rulemakings. Such written request may be mailed or delivered to Colleen White, Rule Reviewer, Department of Corrections, 1539 11th Ave., PO Box 201301, Helena, Montana 59620-1301, fax to 406-444-4920, e-mail cowhite@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Corrections.

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

DEPARTMENT OF CORRECTIONS

/s/ Bill Slaughter
Bill Slaughter, Director

/s/ Colleen A. White
Colleen A. White, Rule Reviewer

Certified to the Secretary of State April 1, 2002

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 8.64.509,) AMENDMENT
pertaining to the licensure of)
out-of-state applicants)
(endorsement))

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On June 14, 2002, the Board of Veterinary Medicine proposes to amend the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Veterinary Medicine no later than 5:00 p.m., May 3, 2002, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolvet@state.mt.us.

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

8.64.509 LICENSURE OF OUT-OF-STATE APPLICANTS
(ENDORSEMENT) (1) through (1)(b) remain the same.

(c) The candidate holds a valid and unrestricted license to practice veterinary medicine in another state or jurisdiction, and has been continuously in practice for ~~five~~ four years immediately preceding the date of application to Montana. Official written verification of such licensure status must be received by the board directly from the other states or jurisdictions.

(d) The candidate's license to practice veterinary medicine has had no disciplinary sanction during the last ~~five~~ four years of licensure and no license suspension or license revocation at any time.

(e) through (h) remain the same.

AUTH: 37-1-131, 37-18-202, MCA
IMP: 37-1-304, 37-18-303, MCA

REASON: There is reasonable necessity to amend ARM 8.64.509 to allow the Board the additional leeway in evaluating whether an out-of-state veterinarian has suitable experience so as to qualify for a Montana license without another national written

examination. The Board has recently reviewed applications from several veterinarians licensed in other states who appeared adequately qualified, in the Board's opinion, to obtain a Montana license without another national written examination, but who had only four years of current experience. The Board believes that the public health and welfare is adequately protected from unqualified practitioners by requiring out-of-state applicants for licensure without another national written examination to demonstrate four years of current experience and no disciplinary action against the applicant's license during that four year period. Applicants with less than four years of current experience will still be required to meet the requirements of ARM 8.64.501 in order to become licensed to practice in Montana.

The estimated economic impact of the proposed rule change is zero, because the application fee of \$200 for the veterinarian's examination is the same as the \$200 application fee for veterinary licensees from other states.

4. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolvet@state.mt.us. to be received no later than 5:00 p.m, May 10, 2002.

5. If persons who are directly affected by the proposed action wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolvet@state.mt.us to be received no later than 5:00 p.m., May 10, 2002.

6. An electronic copy of this Notice of Proposed Amendment is available through the Department's and Board's site on the World Wide Web at <http://discoveringmontana.com/dli/vet>. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

7. If the Board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a governmental

agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 97 based on the 973 licensed veterinarians in Montana.

8. The Board of Veterinary Medicine 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 Veterinary Medicine administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to compolvet@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

9. The Board of Veterinary Medicine will meet on June 14, 2002, in Bozeman to consider the comments made by the public, the Board's responses to those comments, and take final action on the proposed amendment. The meeting will be held in conjunction with the Board's regular meeting. Members of the public are welcome to attend the meeting and listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed amendment beyond the May 10, 2002, deadline.

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

BOARD OF VETERINARY MEDICINE
ROBERT LEE, DVM, PRESIDENT

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

Certified to the Secretary of State, April 1, 2002.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of ARM 24.11.204,) PROPOSED AMENDMENT AND
24.11.613, 24.11.616, and) ADOPTION
24.11.1207 and the proposed)
adoption of a new rule all)
relating to unemployment)
insurance benefits matters)

TO: All Concerned Persons

1. On May 3, 2002, at 1:00 p.m. a public hearing will be held in the fourth floor conference room of the Walt Sullivan Building, 1327 Lockey Street, Helena, Montana, to consider the proposed amendment of existing rules and the adoption of a new rule all related to unemployment insurance benefit matters.

2. The Department of Labor and Industry 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 by not later than 5:00 p.m., April 26, 2002, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance Division, Attn: Mr. Don Gilbert, 1327 Lockey, Walt Sullivan Building, P.O. Box 8020, Helena, MT 59604-8020; telephone (406) 444-4336; TDD (406) 444-0532; fax (406) 444-2699 or e-mail dgilbert@state.mt.us.

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

24.11.204 DEFINITIONS The terms used by the department are, in great part, defined in 39-51-201 through 39-51-205, MCA. In addition to these statutory definitions, the following definitions apply to this chapter, unless context or the particular rule provides otherwise:

(1) "Additional claim" means a claim that is reactivated as provided in ARM 24.11.445(2) following one or more separations from insured work occurring subsequent to the filing of an initial claim or of a prior additional claim.

(2) "Adjudicate" means to make a determination, redetermination, or decision relative to an issue that exists on a claim.

(3) "Appeal" means a request by an interested party aggrieved by a determination, redetermination, or decision for a review of the determination, redetermination, or decision at the next higher level of review.

(4) "Appropriate telephone center" means the unemployment insurance telephone center that serves the geographical area in which a claimant resides.

(5) "Base period employer" means an employer from whom a

claimant earned wages for insured work during the base period of the claim.

(6) "Benefit overpayment" means the amount of benefits paid to a claimant to which it is subsequently determined the claimant was not entitled by reason of disqualification, ineligibility, or reduction in entitlement.

(7) "Child" as used in 39-51-2111, MCA, means:

(a) an individual who is a minor, including an emancipated minor, under the age of 18, as defined under 41-1-101, MCA; or

(b) an individual who is 18 or older and meets the definition of an individual with a disability as defined by Title VII of the federal Rehabilitation Act of 1973, 29 U.S.C. 705(20)(A) and (B), as amended, and who is dependent upon his/her parent(s) or guardian(s) for food, shelter, living expenses and other necessities.

(i) The department will consider information provided by state or federal agencies or professional persons, who are certified by the state of Montana according to 53-21-106, MCA, to determine if an individual who is 18 or older should be considered a disabled adult.

~~(7)~~(8) "Claim," as used in this chapter and in Title 39, chapter 51, MCA, unless the context or language clearly indicates otherwise, means an initial, additional, reopened, continued, or biweekly claim.

~~(8)~~(9) "Claimant" means a person who has filed, or is in the process of filing, an initial claim.

~~(9)~~(10) "Continued claim" means a notice filed by a claimant stating whether or not the claimant wishes to claim benefits or waiting period credit for any week that begins within the claimant's benefit year.

~~(10)~~(11) "Days" means a specified number of consecutive days, not excluding Saturdays, Sundays, and holidays except as provided in ARM 24.11.206.

~~(11)~~(12) "Discharge," as used in 39-51-2303, MCA, means a termination of the work relationship between an employer and a worker initiated by the employer, for reasons other than a lack of work, whether or not in response to some act or omission on the part of the worker.

(13) "Educational credential" means a degree, diploma, certificate, transcript, report, document, letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to mean enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites of a class, course or program of training, instruction, or study.

~~(12)~~(14) "Educational institution," as used in 39-51-2108 and 39-51-2307, MCA, means any public, private, or non-profit academic, vocational, technical, business, professional, or other school (including a home school), college, or university that offers educational credentials and/or educational services.

~~(14)~~(15) "Educational service" means a class, course, or program of training, instruction, or study.

~~(15)~~(16) "File" or "filing" means:

(a) with respect to an appeal of a determination,

redetermination, or decision regarding a claim for benefits, an interested party's communication to the department, in the manner and within the time prescribed by the department, of that party's desire to have that determination, redetermination, or decision reviewed or heard by the next highest level of adjudication;

(b) with respect to a claim for benefits, a communication to the department, in the manner and within the time prescribed by the department, of a claimant's desire to establish an initial claim, reactivate an inactive claim, or make a biweekly claim;

(c) with respect to information required by the department for the proper administration of a claim or information an interested party wishes the department to consider regarding a claim, a communication to the department, in the manner and within the time prescribed by the department, conveying the purpose and substance of the information;

(d) with respect to records kept by the department for unemployment insurance matters, the place where such records are stored or the act of placing information into the place where such records are stored. The department's records may be stored in a variety of media, including traditional paper copies, microfilm, and electronic or magnetic formats, or a combination of those media.

~~(16)~~(17) "Full-time work" means insured work in which a worker is regularly scheduled to work 40 or more hours per week.

~~(17)~~(18) "Good cause" means reasonably compelling circumstances which did not result from any act or omission on the part of the person claiming good cause and which could not be overcome by reasonable diligence on the part of the person.

~~(18)~~(19) "Initial claim" means a request filed by a claimant for a determination of the claimant's potential entitlement to and eligibility for benefits.

~~(19)~~(20) "Insured work" means services deemed to be employment in any state pursuant to an arrangement under 39-51-504(1), MCA, and employment as defined in 39-51-203, MCA, but does not include those services enumerated in 39-51-204, MCA, except for federal civilian service, federal military service, and services that constitute employment in any other state, provided that those services and the wages therefore are potentially:

(a) assignable to this or another state pursuant to 20 CFR 609 or 20 CFR 614; or

(b) transferable to this state or another state pursuant to 20 CFR 616.

~~(20)~~(21) "Issue" means any act, circumstance, or condition that has the potential to disqualify or make a claimant ineligible for benefits or to reduce the amount of benefits payable to a claimant.

~~(21)~~(22) "Labor market area" means an economically integrated geographic area within which individuals can reside and find work within a reasonable distance or can readily change jobs without changing their place of residence.

~~(22)~~(23) "Leaving work," as used in 39-51-2302, MCA,

means:

(a) any permanent, long-term, or indefinite reduction in a worker's hours of insured work for a particular employer initiated by the worker, whether or not in response to some act or omission on the part of the employer and whether or not sanctioned by the employer; or

(b) failing to return to work following a period of temporary layoff or suspension if the worker knew or should have known that the layoff or suspension was no longer in effect and that work was once again available to the worker.

~~(23)~~(24) "Long-term" means that the circumstance in question will or may reasonably be expected to continue to exist substantially unchanged for a period of time exceeding six consecutive weeks.

~~(24)~~(25) "Monetary determination" means a determination of a claimant's potential entitlement to benefits based upon the amount and distribution of wages in the claimant's base period.

~~(25)~~(26) "Non-monetary determination" means a decision involving an issue relative to a claim for benefits that does not involve a claimant's potential entitlement to benefits based upon the amount and distribution of wages in the claimant's base period.

~~(26)~~(27) "Permanent layoff" means an indefinite termination of the work relationship between an employer and a worker initiated by the employer due only to a lack of work for the worker to perform.

~~(28)~~ "Recently lived" as used in 39-51-2111(5), MCA, means having lived with the abusive person for the 12 month period immediately preceding the date the claimant left insured work or was discharged from insured work due to domestic violence or domestic abuse.

~~(27)~~(29) "Reopened claim" means a claim that is reactivated as provided in ARM 24.11.445(2) when there have been no separations from insured work subsequent to the filing of an initial claim or of a prior additional claim.

~~(28)~~(30) "Separation" means any reduction in a worker's hours of insured work for a particular employer.

~~(29)~~(31) "Suspension" means an abeyance of the work relationship between an employer and a worker initiated by the employer for disciplinary, investigative, or other reasons not including a lack of work for the worker to perform.

~~(30)~~(32) "Temporary layoff" means a suspension of the work relationship between an employer and a worker initiated by the employer due only to a lack of work for the worker to perform and where the employer intends to recall the worker at such time as work becomes available.

~~(31)~~(33) "Termination" means either a discharge or a permanent layoff.

~~(32)~~(34) "Valid claim" means an initial claim with base period wages of an amount sufficient to qualify the claimant for benefits under 39-51-2105, MCA, or under a comparable law of any other state, and which results in the establishment of a benefit year under 39-51-201, MCA, or under a comparable law of any other state, without respect to whether or not the claimant is

otherwise qualified or eligible to receive benefits.

~~(33)~~(35) "Week claimed" means any week with respect to which a claimant files a continued claim.

~~(34)~~(36) "Week ending date" is the date on which the Saturday of any week falls.

AUTH: 39-51-301 and 39-51-302, MCA

IMP: 39-51-2111, MCA

REASON: House Bill 463 passed during the 2001 legislative session and provided a means of paying unemployment insurance benefits to certain victims of domestic violence. In order to better implement that bill, the department believes it prudent to define certain terms that are used. The term "child" is being defined to include minor children and adult disabled children of a victim of domestic violence. The department believes that definition of child to be consistent with legislative intent and will assist the department in having equal application of the law when making benefit eligibility determinations.

Another condition for determining whether a domestic violence victim will be eligible for unemployment insurance benefits is the requirement that the victim or the victim's child has recently lived with the abuser. The statute does not define what it means to have "recently lived" with the abuser. In an effort to have uniform and consistent application of the law, the department has defined "recently lived" to mean having lived with the abuser for a period of time during the 12 month period prior to the person leaving work due to domestic violence. The department believes that a person's leaving work cannot be too remote in time from having lived with the abuser and still be within the legislative intent in passing House Bill 463. The department believes it prudent to provide a degree of certainty by defining terms rather than leaving it to the court system to define terms that are essential to benefit determinations.

24.11.613 CHARGING BENEFIT PAYMENTS TO EXPERIENCE-RATED EMPLOYERS--CHARGEABLE EMPLOYERS (1)(a) Beginning with initial claims filed on or after October 1, 1989, benefit payments are charged to each employer who paid wages to the claimant during the base period. The charge will be based on the percentage of wages the employer paid to the claimant during the base period. For example, if the claimant earned 10 percent of the base period wages working for an employer, that employer would be chargeable for 10 percent of the benefits drawn by the claimant.

(b) If more than one separation or severance of employment exists from the same base period employer, charges or relief of charges will be based on the reason for the most recent separation or severance of employment occurring prior to the effective date of the claim. Any separation or severance of employment occurring after the effective date of a claim will not result in relief of charges on that claim, but may on a subsequent claim, if the reason for separation or severance of

employment allows relief of charge.

(c) The department's determination concerning a separation or severance of employment from a base period employer, which subjects the claimant to possible disqualification under provisions of 39-51-2302, 39-51-2303, 39-51-2305, MCA, will determine if that employer's account will be charged.

(d) A "severance of employment" occurs when an employing unit ceases paying wages, as defined in 39-51-201, MCA, even though the work duties may not cease, provided the employing unit is not subject to 39-51-1219, MCA.

(2) An employer has not reduced hours or wages as used in 39-51-1214, MCA, if continued work was available for the same number of hours prior to the date the initial claim was filed as at the time of most recent hire. If the claimant was hired on a part-time basis with no guaranteed hours, no reduction has occurred unless the wages paid or the hours available ~~for the month prior to the filing date of the claim were 10 percent less than any prior month in the most recent completed calendar quarter in the four weeks following the filing date of the claim~~ are at least 10 percent less than the wages paid or hours available in the four weeks prior to the filing date of the claim. A reduction for salaried employees is based on a reduction in salary only, not on a reduction in hours.

(3)(a) ~~When a claimant files a claim for benefits~~ the first benefit check is issued, the department mails a "Potential Benefit Charge Notice" to the chargeable employer. This notice tells the employer that the benefits paid to the claimant will be charged to the employer's account unless the employer shows that the claimant was fired for misconduct or quit without good cause attributable to employment. The explanation of the separation must contain specific details of the separation, including copies of any supporting documents.

(b) As provided in 39-51-1214, MCA, the department reviews the information submitted by the employer and issues a determination notice stating whether or not the employer should be charged for the claimant's benefits.

(c) An employer has 10 calendar days from the date of the notice to respond to the "Potential Benefit Charge Notice" and/or "Notice of Claim Filing & Potential Benefit Charge". If an employer fails to show good cause for delay in responding to either notice, the employer response will not be considered timely and will not be used in the department's determination.

(d) If the basis for the request for relief of charges would have justified such relief, but the employer fails to provide separation information with the time limits of the notice, such charges will not be relieved.

(e) The employer may appeal the department's decision within 10 days of mailing the determination as provided in 39-51-2402, MCA.

(4) Within 60 days of the end of each calendar quarter, the department mails to the employer a statement of benefits charged to the employer's account. This statement is the "Quarterly Statement of Benefits Paid" and is for informational purposes only since any appeal must be made from the "Potential

Benefit Charge Notice" and shows:

- (a) the claimant's name and social security number;
- (b) the date on which the charges were effective; and
- (c) the amount of benefits charged to the employer's account.

AUTH: 39-51-301 and 39-51-302, MCA

IMP: 39-51-1214, MCA

REASON: The department believes the change in (2) is necessary to clarify when an employer's account will be charged for the benefits to a former employee, who was employed on a part time basis with no guaranteed hours of employment. In today's society, the number of jobs that offer part time employment with fluctuating hours is increasing. To insure the Unemployment Insurance Trust Fund remains solvent, the department believes clarification of this rule is needed. Implementation of a simple process to determine if an employer's account should be charged should enable all employers to determine if their account will be charged for benefits paid to former employees.

The change in (3)(a) is needed to reflect a procedural change due to implementation of the new unemployment insurance computer system (MISTICS). Comments received from employers indicated the prior process was confusing and caused them extra work. The prior process mailed "potential benefit charge" notices to employers when a former employee filed a claim for benefits, without determining if the claim would be monetarily ineligible. Monetarily ineligible claims are not charged to an employer's account. The new process issues "potential benefit charge" notices after issuance of the first benefit check. The new process is expected to reduce both the amount of paperwork requested from employers and departmental mailing expenses.

24.11.616 BENEFIT OVERPAYMENTS--CREDITING EMPLOYER ACCOUNTS (1) The department immediately credits an experience-rated employer's account if a benefit overpayment occurs. The employer is informed of the credit on the statement of benefits charged to the account.

(2) The employer's account is credited for the amount the account was previously charged for benefits. For example, if the employer was charged for 50% of the benefits, the employer would be credited for 50% of the overpayment.

(3) ~~A governmental entity or an employer electing to reimburse the fund is credited for an overpayment when the overpayment is recovered from the claimant or when the overpayment is waived. However, effective as of the date of the replacement of the department's computerized benefit payment and accounting system, expected to occur during calendar year 2000~~ Effective April 1, 2001, charges to the accounts of governmental entities and employers electing to reimburse the fund will be credited for benefit overpayments in the same manner as experience-rated employers.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-1110, MCA

REASON: Previously, the department had two methods of crediting benefit overpayments - experience rated employers received credit upon discovery of an overpayment, and reimbursable employers and governmental employers received credit as the overpayment was recovered or repaid. The department believes that having two different procedures created undue confusion among employers, citizens and staff. The U.S. Department of Labor encouraged this department to adopt one procedure. The department implemented the change in April 2001, with the implementation of the new unemployment insurance computer system. The department believes this change to one procedure applicable to all employers will eliminate confusion in this area of the unemployment insurance program.

24.11.1207 WAIVER OF RECOVERY OF BENEFIT OVERPAYMENTS

- (1) For the purposes of this rule:
 - (a) "assets" include, but are not limited to:
 - (i) cash on hand;
 - (ii) bank, credit union, savings and loan, and brokerage accounts;
 - (iii) securities, excluding those held as part of a qualified retirement plan;
 - (iv) cash-value insurance policies;
 - (v) real and personal property, excluding the claimant's primary residence and one primary vehicle.
 - (b) "average cash flow" means six times the amount obtained by subtracting average monthly expenses from average monthly income, even if the amount is less than zero.
 - (c) "average monthly expenses" means the amount of all necessary and allowed expenses, converted to a monthly basis if not incurred in that manner, incurred by the claimant at the time of the claimant's request for waiver.
 - (d) "average monthly income" means the amount of all income, converted to a monthly basis if not paid in that manner, accruing to the claimant at the time of the claimant's request for waiver.
 - (e) "income" includes, but is not limited to:
 - (i) wages, salaries, and commissions;
 - (ii) interest and dividends;
 - (iii) net business proceeds;
 - (iv) rents;
 - (v) pensions;
 - (vi) disability payments; and
 - (vii) alimony.
 - (f) "necessary and allowable expenses" are limited to:
 - (i) rent or mortgage payments;
 - (ii) insurance, taxes, utilities, basic phone service;
 - (iii) groceries and household supplies for a primary residence, but not to exceed \$300 per month for the claimant and \$100 per month for each of the claimant's dependents that reside with the claimant;

- (iv) medical expenses not paid by insurance;
- (v) loan payments, insurance, and expenses for a primary vehicle;
- (vi) work-related child and disabled dependent care expenses;
- (vii) child support payments; and
- (viii) alimony or maintenance payments.

(2) Not sooner than 24 ~~six~~ months following the date the claimant was given notice of the overpayment, a claimant may request the department waive recovery of a benefit overpayment as provided in 39-51-3206, MCA.

(3) The department may waive recovery of all or a portion of a benefit overpayment if:

(a) the benefit overpayment is not a fraudulent benefit overpayment as defined in ARM 24.11.468(1); and

(b) it is shown to the satisfaction of the department that recovery of the benefit overpayment would cause a long-term financial hardship on the claimant; and

(c) the benefit overpayment was not the result of a reversal, modification, or revision on appeal of an earlier determination, redetermination, or decision which allowed the payment of benefits, unless the benefit overpayment was the result of a monetary determination that was revised due to employer reporting error or clerical error on the part of the department or an agent of the department.

(4) In determining whether recovery of the benefit overpayment would cause a long-term financial hardship on the claimant, as provided in (3)(b), the department takes into account the claimant's average household cash flow and net value of household assets.

(a) The claimant requesting a waiver is required to provide documentation of income, assets, and expenses on a form provided by the department and may be required to provide further information if needed for the department's determination. The department may require verification of any financial information provided. The department may also disallow or adjust any claimed expenses that it deems to be unreasonably excessive.

(b) Recovery of the benefit overpayment will be deemed to cause a long-term financial hardship on the claimant if ~~if~~ the department finds:

(i) that the sum of the claimant's average household cash flow; and

(ii) the net value of the claimant's household assets equals an amount less than the amount of the benefit overpayment in question; and

(iii) finds no evidence that the claimant's average household cash flow or the net value of the claimant's household assets are, within the 12 months ~~immediately following~~ preceding the date of the claimant's request for waiver, likely to increase in an amount that would cause the sum of the two to exceed the amount of the benefit overpayment., ~~recovery of the benefit overpayment will be deemed to cause a long-term financial hardship on the claimant.~~

(5) After consideration of a claimant's request for waiver, the department notifies the claimant of its decision either to grant or to deny the request and of the claimant's right to appeal under 39-51-2402 and 39-51-2403, MCA.

(6) A claimant whose request for waiver has been denied only by reason of the provisions of (3)(b) may submit a new request for waiver if the claimant's financial situation has significantly changed since the denied request was filed.

(7) Repayment of a benefit overpayment by offset of benefits continues during the time a claimant's request for waiver is under consideration and until a determination either allowing or denying the claimant's request for waiver, including any appeals decision, becomes final. If a request for waiver is allowed, the claimant is reimbursed for any repayments collected after the date the claimant's request for waiver was received by the department.

AUTH: 39-51-301 and 39-51-302, MCA

IMP: 39-51-3206, MCA

REASON: There is reasonable necessity to amend ARM 24.11.1207 as proposed in order to reduce the time before a claimant may request the department to waive recovery of a benefit overpayment and the period of time for determining long-term financial hardship. Sections (2) and (4) were adopted effective December 31, 2000 and under the current rule, claimants requesting a waiver of a benefit overpayment must wait 24 months before the waiver can be considered. Claimants do not believe this is a reasonable time to wait for consideration of a waiver and want a decision issued in a shorter amount of time. In addition, the 24 month time period requires the department to track the waiver requests and contact the claimant for financial information at the end of the 24 month period. As a result of the past 13 months (as of January 2002) of experience with (2) and (4), the department has concluded that (2) should be amended to reduce the waiting period to 6 months following the date of the overpayment notice before waiver can be requested. Subsection (4) should be amended to change the time period for determining long-term financial hardship to 12 months preceding the date of the claimant's request for waiver.

4. The proposed new rule provides as follows:

NEW RULE I DOMESTIC VIOLENCE DISQUALIFICATION (1) A claimant who is determined to be ineligible for benefits under 39-51-2111, MCA, by reason of remaining in, or returning to, an abusive situation, will be disqualified under 39-51-2302, MCA.

(2) A claimant may re-qualify for benefits under 39-51-2302(3), MCA, by immediately and permanently leaving the abusive situation. The department may accept information from the claimant or other agencies, such as law enforcement or domestic violence shelters, documenting that the claimant has left the abusive situation. Documentation may include any of the following:

(a) a statement by the claimant that they have ended the relationship and the furnishing of a new mailing address and the date of the move;

(b) documentation from a law enforcement agency that the abusive individual is incarcerated;

(c) documentation from a domestic violence shelter indicating the claimant has been granted residence at the shelter; or

(d) other evidence, subject to verification by the department, establishing that the claimant has left the abusive situation.

AUTH: 39-51-301 and 39-51-302, MCA

IMP: 39-51-2111, MCA

REASON: There is reasonable necessity to adopt NEW RULE I to address concerns raised by the U.S. Department of Labor concerning the process by which an individual may re-qualify for benefits. Section 3304(a)(10) of the Federal Unemployment Tax Act limits the situations in which an individual can be penalized by the loss of his/her entire entitlement to benefits due to situations involving gross misconduct and receipt of benefits under fraudulent means. All other situations require the state to specify methods by which an individual may re-qualify for benefits. This rule specifies the applicable situations and the documents which an individual must provide and/or actions that an individual must accomplish in order to re-qualify for benefits following a domestic violence disqualification. Section (2) lists the various types of documentation the department will consider in determining if a claimant has ended an abusive relationship and may re-qualify for benefits.

The U.S. Department of Labor encourages the department to utilize the state's voluntary leaving law (39-51-2302, MCA) as the method permitting individuals to re-qualify.

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:

Don Gilbert
Unemployment Insurance Division
Department of Labor and Industry
P.O. Box 8020
Helena, Montana 59604-8020

and must be received by no later than 5:00 p.m., May 10, 2002. Comments may also be submitted electronically as noted in the following paragraph.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment

forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., May 10, 2002. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

7. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the Department has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

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

9. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ WENDY KEATING
Wendy Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 1, 2002.

BEFORE THE BOARD OF REVIEW
DEPARTMENT OF REVENUE
STATE OF MONTANA

In the matter of the proposed)NOTICE OF PUBLIC HEARING
adoption of New Rules I through)ON PROPOSED ADOPTION
V relating to the one-stop)
licensing program administered)
by the department of revenue on)
behalf of the board of review)

TO: All Concerned Persons

1. On May 1, 2002, at 9:00 a.m., a public hearing will be held in the Director's Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rules I through V relating to the one-stop licensing program administered by the Department of Revenue on behalf of the Board of Review, which is attached to the Department of Revenue as provided in 2-15-121, MCA.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Cleo Anderson, Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us no later than 5:00 p.m., April 22, 2002, to advise us of the nature of the accommodation that you need.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to this chapter.

(1) "Agency" means those agencies identified in 30-16-303, MCA, and other state agencies as approved by the governor.

(2) "Department" means the department of revenue as defined in 30-16-103, MCA.

(3) "Master application" means the application as provided in the one-stop licensing guide provided by the department.

AUTH: Sec. 30-16-104, MCA

IMP: Sec. 30-16-103 and 30-16-303, MCA

REASONABLE NECESSITY: The board is proposing to adopt New Rule I to clarify the difference between "agency" and "department". Agency refers to those state offices that participate in the one-stop program. The department administers the issuance of licenses for multiple agency programs in state government.

NEW RULE II ONE-STOP BUSINESS LICENSING GUIDE (1) The department shall make available to all taxpayers a guide regarding the process for filing an application under the one-stop program. This guide dated December 2001 is hereby incorporated by reference and may be obtained from the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.

AUTH: Sec. 30-16-104, MCA

IMP: Sec. 30-16-103, 30-16-201, 30-16-301, 30-16-302, and 30-16-303, MCA

REASONABLE NECESSITY: The board is proposing to adopt New Rule II to advise the public where it can obtain the guide explaining the one-stop licensing program, including the establishment of anniversary dates, which is administered by the Department of Revenue.

NEW RULE III ANNIVERSARY DATES ESTABLISHED BY THE DEPARTMENT (1)

The department will provide a master application form to all license applicants who qualify under Title 30, chapter 16, MCA. This application form shall be completed and returned to the department for processing.

(2) The date the department processes a complete master application shall be the anniversary date for all licenses unless the agency notifies the department of a different date.

(3) Anniversary dates for pre-existing licenses administered under Title 30, chapter 16, MCA, shall be the date originally issued by the department.

AUTH: Sec. 30-16-104, MCA

IMP: Sec. 30-16-103, 30-16-201, 30-16-301, 30-16-302, and 30-16-303, MCA

REASONABLE NECESSITY: The board is proposing to adopt New Rule III to explain how the anniversary date will be determined by the department for licenses administered under the one-stop licensing program.

NEW RULE IV RESPONSIBILITIES (1) It shall be the responsibility of the agency to enforce and administer the licenses according to the appropriate statutes of that agency. It is the responsibility of the agency to acquire missing documents or material necessary to process the master application and forward this material to the department.

(2) It shall be the responsibility of the department to process complete master applications that contain all the necessary supporting documentation. Applications will be processed upon receipt but licenses will not be issued until all required documents have been forwarded to the department from the agency or the applicant.

AUTH: Sec. 30-16-104, MCA

IMP: Sec. 30-16-103, 30-16-201, 30-16-301, 30-16-302, and

30-16-303, MCA

REASONABLE NECESSITY: The board is proposing to adopt New Rule IV to clarify the difference in responsibilities between the agency and the department, and to indicate that an anniversary date cannot be established until a complete master application has been processed.

NEW RULE V PRO-RATING LICENSE FEES (1) License fees shall be pro-rated only at the request of the agency responsible for administration of the license.

AUTH: Sec. 30-16-104, MCA

IMP: Sec. 30-16-103, 30-16-201, 30-16-301, 30-16-302, and 30-16-303, MCA

REASONABLE NECESSITY: The board is proposing to adopt New Rule V to address when license fees will be pro-rated by the department. The licensing fees are established by each agency participating in the program and will vary based on statutory authority. The board has no way to determine the fiscal impact.

4. 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:

Board of Review

Attn: Cleo Anderson

P.O. Box 5805

Helena, Montana 59604-5805

and must be received no later than May 10, 2002.

5. Cleo Anderson, Department of Revenue, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the Department of Revenue's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board through the Department of Revenue. 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 particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Board.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State April 1, 2002

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of new rules I through) ON PROPOSED ADOPTION
III relating to exemptions,)
reduced tax rates, and credits)
for energy facilities)

TO: All Concerned Persons

1. On May 2, 2002, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rules I through III relating to tax exemptions, reduced tax rates, and credits for energy facilities.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., April 22, 2002, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I ELECTRICAL GENERATION AND TRANSMISSION FACILITY - PUBLICATION, QUALIFICATION, AND REPORTING (1) If the net generating output of the facility is offered for sale as prescribed by law, an electrical generation facility and related delivery facility may qualify for a property tax exemption, reduced tax rate, or credit as provided in the applicable statute.

(2) In order to qualify for the exemption, reduced tax rate, or credit the following (in addition to the information required in [New Rule II]) must be provided:

(a) Where there is a contract, an abstract of a contract may be provided. This abstract must contain, at a minimum, the following information:

(i) the amount of a facility's net generating output being sold to customers at a cost-based rate including:

- (A) amount of power being sold;
- (B) price; and
- (C) term.

(b) If an abstract of a contract is not provided pursuant

to (2)(a), qualification for an exemption, reduced tax rate, or credit must be shown through proof of publication in the legal section of the following six Montana newspapers:

- (i) Montana Standard;
- (ii) Tribune;
- (iii) Gazette;
- (iv) Independent Record;
- (v) Chronicle; and
- (vi) Missoulian.

(c) If an abstract of a contract is not provided, a copy of the publication in the newspapers set forth in (2)(b), which must include the:

(i) offer to sell the applicable percentage of a facility's net generating output to customers at a cost-based rate including:

- (A) amount of power being offered;
- (B) price; and
- (C) term.

(ii) date when the offer ends (must be open for a minimum of 15 calendar days from the final date of publication in the newspapers); and

(iii) appropriate person to contact regarding the offer.

(3) The taxpayer must make available to the department for inspection in Helena, at a place, date, and time specified by the department, a copy of the contract showing the cost-based rate, if an abstract is provided.

(4) The material specified in (2) must be sent to the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805, on or before March 31 of the year for which the exemption, reduced tax rate, or credit is sought.

(5) The department will review the contract information or offer information, as published, and may require supporting documentation. The taxpayer will be advised in writing of the approval or denial of the requested exemption, reduced tax rate, or credit within 30 days of receipt of all of the information required to be reported under this rule and [New Rule IV]. The department may review the request beyond the 30-day timeframe and issue a notice of denial within an additional 180 days.

AUTH: Sec. 15-1-201, 15-30-305, and 15-32-407, MCA

IMP: Sec. 15-24-3001, 15-32-403, and 15-35-103, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to establish that the new facility has met the requirements of offering a contract. The department believes there is a requirement that it be notified of the offer to ensure that the offer is bona fide or a contract exists. Taxpayers are encouraged to file the request for exemption, reduced tax rate, or credit before March 31 of the year for which the exemption, reduced tax rate, or credit is sought. The material being requested by the department will be used to confirm the exemption, reduced tax rate, or credit. The department believes it is necessary to establish a review period to approve or deny the requested exemption, reduced tax rate, or

credit to provide finality to the process. This rule applies to statutory changes made by HB 643 and SB 134, 506, and 508 of the 2001 legislative session.

NEW RULE II ALLOWABLE COSTS OF PRODUCTION, RATE OF RETURN, AND NET GENERATING OUTPUT - VERIFICATION AND REPORTING (1) A taxpayer applying for an energy-related tax exemption, reduced tax rate, or credit that requires the taxpayer to offer a contract to sell a portion of the electricity to customers at a cost-based rate, including a reasonable rate of return, must use accounts prescribed by the federal energy regulatory commission (FERC) or rural utility service (RUS) demonstrating that the price or prices reflected in its contract or offer do not produce a rate of return in excess of statutory requirements. The taxpayer must show the calculations used. These calculations shall include reference to supporting documents that verify the costs of production, cost-based rate of return, and the facility's applicable percentage of the net generating output.

(2) The department will verify the cost-based rate of return using a discounted cash flow method.

(3) The allowable cost-based rate of return may only be based on those costs directly related to the electrical generation facility. Non-related costs will not be used in calculating the allowable costs of production. These non-related costs include, but are not limited to:

- (a) non-related corporate overhead;
- (b) advertising;
- (c) benefit restoration;
- (d) dues, contribution; and
- (e) other settlement items.

(4) In order to qualify for the exemption, reduced tax rate, or credit the following (in addition to the information required in [New Rule I]) must be provided:

(a) a statement setting forth the net generating output of the facility, amount of contracted or offered power, and the percentage of net generating output subject to the contract or offer;

(b) a statement setting forth the price, allowable costs, cost-based rate of return, and any underlying calculations used to determine those amounts; and

(c) if a statutory term is required, a statement setting forth the timeframe of the statutory term and the term of the contract.

(5) The department will review the material and may review supporting documentation. The taxpayer will be advised in writing of approval or denial within 30 days of receipt of all of the information required to be reported under this rule and [New Rule I]. The department may review the request beyond the 30-day timeframe and issue a notice of denial within an additional 180 days.

(6) The required information must be sent to the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805, on or before March 31 of the year for which the exemption, reduced tax

rate, or credit is sought.

(7) The department may issue a notice of disallowance at any time during the applicable statutory period, plus one year, in which the exemption, reduced tax rate, or credit applies if the applicable percentage rate of the facility's net generating output is not maintained or the taxpayer fails to perform the contract or verify compliance with the requirements to contract offer output.

AUTH: Sec. 15-1-201 and 15-32-407, MCA
IMP: Sec. 15-24-3001 and 15-32-403, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to establish a departmental process to verify a cost-based rate of return using discounted cash flow methods. The department believes that it has the responsibility to verify and potentially calculate allowable costs of production and rate of return. This rule applies to statutory changes made by SB 506 and 508 of the 2001 legislative session.

NEW RULE III RECORDS REQUIRED - AUDIT (1) Taxpayers shall maintain records necessary to support the application for tax exemption, reduced tax rate, or credit.

(2) Such records shall include specific documentation of costs directly related to the electrical generation facility.

(3) The records shall be maintained by the taxpayer for the appropriate statutory period of time that the exemption, reduced tax rate, or credit may be received by the taxpayer, plus one year. Such records shall be subject to audit by the department at any time during that period.

AUTH: Sec. 15-1-201, 15-30-305, and 15-32-407, MCA
IMP: Sec. 15-24-3001, 15-32-403, and 15-35-103, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III to clarify the period of time that records must be retained to verify an exemption, reduced tax rate, or credit. Taxpayers will be required to maintain these documents for the statutory period applicable to each area of taxation relative to these rules. The responsibility of the department to verify and potentially calculate allowable costs of production and rate of return continues throughout the period of time that the exemption, reduced tax rate, or credit may be received by the taxpayer, plus one year. This rule applies to statutory changes made by SB 506 and 508 of the 2001 legislative session.

4. 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:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805

Helena, Montana 59604-5805
and must be received no later than May 10, 2002.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue 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 particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State April 1, 2002

BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the)	CORRECTED NOTICE OF
adoption of New Rule I)	REPEAL
(ARM 2.55.311) pertaining to)	
multiple rating tiers,)	
amendment of ARM 2.55.319,)	
2.55.320, 2.55.327A,)	
pertaining to premium rates,)	
2.55.409 pertaining to premium)	
modifiers and 2.55.501 and)	
2.55.502 pertaining to)	
individual loss sensitive)	
dividend distribution plan,)	
and repeal of 2.55.325 and)	
2.55.327 pertaining to premium)	
rates)	

TO: All Concerned Persons

1. On January 31, 2002, the Montana State Fund published a notice at page 164 of the 2002 Montana Administrative Register, Issue No. 2 of the adoption, amendment and repeal of the above-captioned rules.

2. The reason for the correction is that the reasonable necessity statement identified that the rules which were to be repealed were to be repealed effective June 30, 2002. However, this was not specifically stated in the adoption notice.

3. The repeal of ARM 2.55.325 and 2.55.327 will be effective June 30, 2002. Replacement pages for the corrected notice were submitted to the Secretary of State on March 31, 2002.

/s/ Nancy Butler
Nancy Butler, General Counsel
Rule Reviewer

/s/ Herb Leuprecht
Herb Leuprecht
Chairman of the Board

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State April 1, 2002.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the)
adoption of new rule I) NOTICE OF ADOPTION AND
cooperative driver testing) AMENDMENT
program and the amendment of)
ARM 10.13.307 through)
10.13.313 pertaining to)
traffic education)

TO: All Concerned Persons

1. On January 17, 2002, the Superintendent of Public Instruction published notice of the proposed adoption and amendment of rules concerning traffic education, at page 6 of the 2002 Montana Administrative Register, Issue Number 1.

2. The Superintendent of Public Instruction has adopted New Rule I, [ARM 10.13.314] COOPERATIVE DRIVER TESTING PROGRAM exactly as proposed.

3. The Superintendent of Public Instruction has amended ARM 10.13.310, 10.13.311, 10.13.312, and 10.13.313 exactly as proposed.

4. The Superintendent of Public Instruction has amended the following rules with the following changes, stricken matter interlined, new matter underlined:

10.13.307 PROGRAM REQUIREMENTS (1) An approved traffic education program for young novice drivers shall:

(a) be provided only by ~~public~~ school districts operating a junior high school or high school ~~or by a non-public junior high school or high school accredited by the Montana board of public education;~~

(b) through (4) remain as proposed.

10.13.308 APPLICATION PROCEDURES (1) A ~~public~~ school district ~~or eligible non-public school~~ shall apply for and receive approval annually from the superintendent of public instruction in order to provide, and prior to commencing, a young novice driver education program. Public school districts eligible for public funding shall apply and receive approval from the superintendent of public instruction prior to starting a young novice driver education program in order to be eligible for state reimbursement from the state traffic education fund.

(2) To obtain approval for a traffic education program, a school district ~~or eligible non-public school~~ shall complete and submit to the superintendent of public instruction an "Application for Approval of a Traffic Education Program(s) for Young Novice Drivers" (form TE01). This application form may be obtained from the superintendent of public instruction's traffic education specialist. Following action by the superintendent of public

instruction, a copy of the application shall be returned to the school district, ~~or eligible non-public school~~, showing the approval status. All necessary forms and materials shall be forwarded at this time.

(3) The traffic education teacher(s) teaching the program shall have approval issued by the superintendent of public instruction on or before the beginning date of the program in order for the school district ~~or eligible non-public school~~ to commence a traffic education program for young novice drivers, or for public school districts to be eligible for state reimbursement.

10.13.309 REIMBURSEMENT TO PUBLIC SCHOOL DISTRICTS

(1) The administrative official of the eligible public school district shall submit a "Traffic Education Program Reimbursement Request" (a certified list of pupils who have completed a state-approved traffic education program) on or before July 10 for all students who completed ~~at least 50% of~~ the program during the preceding fiscal year.

(2) through (5) remain as proposed.

5. The Office of Public Instruction received 53 written comments and 11 people testified at the hearing. A summary of the comments appear below with the Superintendent of Public Instruction's responses:

COMMENT 1: Forty-five comments were received stating that the commentators were opposed to OPI changing the rules to prohibit private schools from having driver education programs. Several of these persons felt that regulating the teacher, curriculum and driver's education program was sufficient. Many felt that the change would increase the taxpayer burden. Some felt that this would deny their children the opportunity to take driver's education because of space or scheduling conflicts with public schools and that taking driver's education in a public school would cost more.

RESPONSE: The Superintendent of Public Instruction has considered all comments and would like to clarify some misconceptions. The proposed rule amendment was not a change in OPI policy. The policy has historically been to approve traffic education programs in public schools and private schools accredited by the Board of Public Education. OPI's intention was to clarify policy by placing it in rule. Further, the rule does not prohibit any school or private entity from having a driver's education program. The rules refer to driver's education programs that can lead to early licensure of students before the age of 16. The legislature delegated the responsibility for this program jointly to the Superintendent of Public Instruction and the Department of Justice. It is also important to note that there is no increase or decrease in taxes associated with this rule amendment. A fixed amount is appropriated by the legislature for the driver's education program. This amount is divided among the public school districts based upon the number of eligible students enrolled in

the driver's education program. The balance of the cost of the program for each district is paid from district funds or a fee charged to the students to take the course.

The Superintendent of Public Instruction has determined that the proposed language regarding this provision will not be adopted and will revert to the original language.

COMMENT 2: The Montana Coalition of Home Educators suggested that in definition of equitable (ARM 10.13.307), the words "public and non-public" be inserted between "all" and "eligible." The Coalition feels that school districts restrict their programs to only public school students.

RESPONSE: The Superintendent of Public Instruction has considered the comment and feels that the amendments to ARM 10.13.307(1)(e) which requires that a "sufficient number of courses are provided to allow every eligible youth within the school's geographic jurisdiction an equitable opportunity to enroll" adequately addresses this issue.

COMMENT 3: The Montana Coalition of Home Educators suggests that the amendment to ARM 10.13.313(1)(a) be removed. The Coalition states that the statute provides that the learner license is "issued" to the student and that it should be the responsibility of the student to decide whether to allow the instructor to manage their license.

RESPONSE: The Superintendent of Public Instruction has considered the comment and believes that the license the Montana Coalition is referring to is a traffic education learner license (TELL) which is issued to the student and allows the student to practice drive only with a licensed parent or guardian or a qualified traffic education teacher. [See (1)(b) of ARM 10.13.313] The traffic education permit (TEP) which is referred to in (1)(a) is a restricted instruction permit authorized by 61-5-106, MCA. This permit is only valid when an approved traffic education teacher accompanies the student. The Superintendent feels that it is appropriate for this permit to be maintained by the traffic education teacher.

COMMENT 4: The Montana Coalition of Home Educators objects to the amendments to ARM 10.13.313(2)(a)(iii) that refer to the identification that a student must submit when applying for a license. Specifically, the Coalition does not feel it is statutorily required for the student to submit a certified birth certificate, proof of residency or social security card.

RESPONSE: The Superintendent of Public Instruction has considered the comment and has been advised by the Department of Justice that the rule, as amended, mirror's the DOJ requirements for licensure. Section 61-5-107, MCA and ARM 23.3.129, 23.3.130 and 23.3.131 require that an applicant for an original license produce the person's social security number, certified copy of

their birth certificate and proof of residency. An applicant that does not have a social security number must comply with the requirements of ARM 23.3.129(4). The Superintendent has amended ARM 10.13.313(2)(a) as set forth above.

COMMENT 5: One commentor stated that he felt that the behind-the-wheel driving time should be increased to eight hours, not six. The commentor also objected to the 50% requirement in subsection (1) of ARM 10.13.309 and felt that it left too much time open for students not to complete their drivers' education and that the school gets reimbursement for a student that didn't pass or finish the program. He also felt that cell phones should be included in the list of required equipment in ARM 10.13.311.

RESPONSE: The Superintendent of Public Instruction has considered the comments and feels that the subject language may create confusion with regard to the intent of the rule. The 50% requirement has been eliminated from (1) as the intent is fully stated in (2) of ARM 10.13.309. The Superintendent feels that cell phones would be an optional item of equipment that schools should consider, however, will not make cell phones mandatory due to the fact that many areas in Montana do not have cell phone capability.

COMMENT 6: One commentor requested information on why the student contact days are being increased to 25 by 2004. He also wanted to know what constituted interruption of instruction in connection with ARM 10.13.307(4)(a).

RESPONSE: The Superintendent of Public Instruction has been advised that the research conducted by ADTSEA (American Driver and Traffic Safety Education Association) indicates that learning needs to be distributed over time for the greatest assimilation. Establishing good driving habits does not happen quickly. The ADTSEA recommends 45 days of driver instruction. Because we are still facing high numbers of teen related traffic accidents, the Superintendent feels that we need to move in the direction this research suggests. The increase has been phased in over three years to give schools an opportunity to adapt to the new requirements.

Interruption of instruction would relate to the amount of time between the classroom instruction and the behind-the-wheel instruction. For example, behind-the-wheel instruction that immediately followed the classroom instruction would not be considered an interruption of instruction. However, conducting the classroom instruction during one semester and the behind-the-wheel instruction the next semester may not be considered concurrent, depending on the time between semesters. The method recommended by the ADTSEA is to study a concept (such as right and left hand turns) in the classroom in the morning and practice the concept in the car in the afternoon.

/s/ Linda McCulloch
Linda McCulloch
Superintendent
Office of Public Instruction

/s/ Jeffrey A. Weldon
Jeffrey A. Weldon
Rule Reviewer
Office of Public Instruction

Certified to the Secretary of State April 1, 2002.

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

In the matter of the)
amendment of ARM 12.3.402)
pertaining to refunding) NOTICE OF AMENDMENT
of the 2-day resident fishing)
license)

TO: All Concerned Persons

1. On January 17, 2002, the Fish, Wildlife and Parks Commission (commission) published notice of the proposed amendment to ARM 12.3.402 pertaining to refunding of the 2-day fishing license at page 17 of the 2002 Montana Administrative Register, Issue Number 1.

2. The agency has amended ARM 12.3.402 as proposed.

3. No comments or testimony were received.

By: /s/ M. Jeff Hagener
M. Jeff Hagener, Secretary
Fish, Wildlife and Parks
Commission

By: /s/ Rebecca Dockter Engstrom
Rebecca Dockter Engstrom
Rule Reviewer

Certified to the Secretary of State April 1, 2002

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

In the matter of the)
amendment of ARM 12.7.801,)
12.7.802, 12.7.803, 12.7.804,) NOTICE OF AMENDMENT
12.7.805, 12.7.806, 12.7.807,)
and 12.7.808 pertaining to)
fishing contest regulations)

TO: All Concerned Persons

1. On January 17, 2002, the Fish, Wildlife and Parks Commission (commission) published notice of the proposed amendment of ARM 12.7.801, 12.7.802, 12.7.803, 12.7.804, 12.7.805, 12.7.806, 12.7.807 and 12.7.808 pertaining to fishing contest regulations at page 29 of the 2002 Montana Administrative Register, Issue Number 1.

2. The commission amended ARM 12.7.801, 12.7.802, 12.7.803, 12.7.804, 12.7.805, 12.7.806, 12.7.807 and 12.7.808 with the following changes from the original proposal. Matter to be deleted is interlined. Matter to be added is underlined.

12.7.801 DEFINITION (1) "Fishing contest" is any event, contest, derby or tournament where an entry fee is charged or where people are expected to compete to win prizes or cash based on the capture of an individual fish or combination of fish. Fishing contests involving fewer than 30 people with cash prizes or merchandise worth ~~less than~~ \$500 or less do not require a permit but must comply with the provisions of this subchapter.

AUTH: 87-3-121, MCA
IMP: 87-3-121, MCA

12.7.802 APPLICATION (1) adopted as proposed.

(2) Applications must be submitted between September 1 and ~~October~~ November 1 for open water contests proposed for the following March 1 through December 1-~~;~~

(a) applications for benefit fundraising contests received later than ~~October~~ November 1 may be accepted.

(3) Applications must be submitted between May 1 and ~~June~~ July 1 for ice fishing contests proposed for the following December 1 through March 1-~~;~~

(a) applications for benefit fundraising contests received later than ~~June~~ July 1 may be accepted.

(4) Contest sponsors must provide evidence documentation that they have approval to use each fishing access site not under the ownership or control of the department that is listed in the application.

(5) Contest sponsors are responsible for notifying participants of any public safety concerns associated with the

~~contest for public safety, trash removal and restroom facilities at department access sites during the duration of the contest.~~

(6) ~~Contest sponsors must require all participants' boats and trailers to be cleaned and inspected prior to the start and at the conclusion of the contest~~ are responsible for notifying participants that boats and trailers must be cleaned before and after the contest to prevent transport and introduction of aquatic nuisance species.

AUTH: 87-3-121, MCA
IMP: 87-3-121, MCA

12.7.803 EVALUATION AND RECOMMENDATION (1) through (1)(g) adopted as proposed.

(2) The department will give public notice of all contests and provide an opportunity for public comment on each application by ~~giving public notice of the application.~~

AUTH: 87-3-121, MCA
IMP: 87-3-121, MCA

12.7.804 COMPETING APPLICATIONS (1) When two or more contests are proposed on a single body of water the department will approve applications which; ~~have less impact on resources and~~

(a) offer the best opportunities for public benefits by furthering knowledge of angling ethics and aquatic ecology;

(b) have been approved historically;

(c) have had good participation; and

(d) have a good record of compliance.

(2) The department may request that applicants competing for a permit on the same or consecutive weekends resolve conflicts and allocate limited dates among themselves.

AUTH: 87-3-121, MCA
IMP: 87-3-121, MCA

12.7.805 DEPARTMENT DECISION (1) ~~Within 90 days of receipt of all applications,~~ The department will issue a decision regarding applications no later than February 1 for open water contests or October 1 for ice-fishing contests. The department may approve the an applications as submitted, approve the an applications with modifications or deny ~~one or more of the an~~ applications. When an application is approved with modifications, the applicant must respond to the department, ~~or the commission if an appeal is made under ARM 12.7.809,~~ within 20 days of receipt of the department's written decision that if the modifications are unacceptable. Failure to do so will constitute ~~withdrawal~~ acceptance of the application decision.

(2) through (2)(d) adopted as proposed.

(e) there is significant public opposition to the proposed contest based on biological or recreational conflict concerns. Public comments will be provided to the sponsor on request.

(3) Conditions may be placed on contests to:

(a) minimize fish mortality in catch and release contests;

(b) regulate harvest; or

(c) reduce user conflicts; or

(d) ~~Tournament boundaries will be defined as necessary to reduce fish mortality or recreational conflict~~ require supplemental trash removal, restroom facilities, or other maintenance at department access sites when routine facilities and maintenance are inadequate for the contest.

(4) and (5) adopted as proposed.

(6) The department will notify the applicant of its decision by mail. The department shall notify the public and ~~all persons submitting comments~~ with an announcement released to all major state newspapers and/or through notice published on the department website.

AUTH: 87-3-121, MCA

IMP: 87-3-121, MCA

12.7.806 REPORTING REQUIREMENTS (1) Within 30 days after an approved fishing contest, the sponsor shall report to the department information on the success of contest participants on forms provided at the time of contest approval, ~~on forms provided, the number of participants, the total number of fish caught, the length and weight of the winning fish, or the average length and aggregate weight of the winning fish, and the number of fish caught and released.~~ The department may require more detailed catch information.

AUTH: 87-3-121, MCA

IMP: 87-3-121, MCA

12.7.807 PROHIBITED CONTESTS (1) ~~All~~ Contests involving harvest of any Montana listed species of special concern or any of the following Montana species are prohibited except the following:

(a) contests are allowed for lake/reservoir stocked Yellowstone cutthroat trout (*Salmo Oncorhynchus clarki bouvieri*) or westslope cutthroat trout (*Salmo Oncorhynchus clarki lewisi*) including upper Missouri cutthroat trout.

(2)(a) All contests involving wild trout (*Onchorynchus* or *Salvelinus*) in streams/rivers are prohibited.

(b) ~~native rainbow trout (*Salmo gairdneri* *Onchorynchus mykiss*);~~

(c) ~~bull trout (*Salvelinus confluentus*);~~

(d) ~~sturgeon chub (*Hybopsis gelida*);~~

(e) ~~sicklefin chub (*Hybopsis meeki*);~~

(f) ~~white sturgeon (*Acipenser transmontanus*);~~

(g) ~~pallid sturgeon (*Scaphirhynchus albus*);~~

(h) ~~paddlefish (*Polyodon spathula*);~~

(i) ~~Yellowstone cutthroat trout (*Salmo Onchorynchus clarki bouvieri*);~~

(j) ~~westslope cutthroat trout (*Salmo Onchorynchus clarki lewisi*) - includes upper Missouri cutthroat trout;~~

~~(k) arctic grayling (*Thymallus arcticus*);~~
~~(l) shortnose gar (*Lepisosteus platostomus*);~~
~~(m) pearl dace (*Semotilus margarita*);~~
~~(n) northern redbelly dace (*Phoxinotus eos*); x finescale dace~~
~~(*P. neogaeus*);~~
~~(o) trout perch (*Percepsis omiscomaycus*);~~
~~(p) shorthead sculpin (*Cottus confusus*); and~~
~~(q) spoonhead sculpin (*Cottus ricei*); and~~
~~(r) sauger (*Stizostedion canadense*).~~
~~(2) Catch and release tournaments with weigh-in formats~~
~~are prohibited during the warm water period of July 1 through~~
~~September 15.~~

AUTH: 87-3-121, MCA
IMP: 87-3-121, MCA

12.7.808 WAIVER (1) remains the same.

(2) During approved catch-and-release fishing contest hours, fish caught for contest purposes and released alive by contest participants are not considered legally taken part of their daily limit. Contest participants may not have more than the daily limit in their possession at any time. All fish must be released alive at the end of the day unless the fish died as a result of handling during the contest.

AUTH: 87-3-121, MCA
IMP: 87-3-121, MCA

3. The following comments were received and appear with the commission's responses:

Comment 1: The language in ARM 12.7.801 should say: "fishing contests involving fewer than 50 people with cash prizes worth less than \$1,000." There aren't many large tournaments.

Response: This rule is intended to exempt the small, local contests that do not have any impact on local facilities or anglers from the permitting process while providing an opportunity to review those contests that have the potential to impact recreational use or biological resources. A number of contests that currently require permitting would be exempt if this proposal was adopted. No change in the prize value is proposed.

Comment 2: The window for submitting applications should be longer, or leave it as it is now.

Response: The purpose of the window is to streamline the review process and provide better planning. This can be accomplished with a 60-day window for accepting applications and some minor revisions in the review process. The department changed ARM 12.7.802 to extend the time allowed for submitting applications.

Comment 3: Contest sponsors should not be responsible for public safety, trash removal and restroom facilities on department access sites for fishing contests. And, the rule should define public safety.

Response: Language has been proposed to clarify this provision and require supplemental facilities and maintenance when necessary at some sites. It will continue to be the responsibility of contest sponsors to alert participants of safety concerns.

Comment 4: Contests sponsors should not be responsible for enforcing the cleaning of boats. This is a department enforcement issue and the department should be responsible.

Response: Language changes to ARM 12.7.802(6) clarify that contest sponsors must notify all participants that boats should be cleaned before and after the contest.

Comment 5: Define "conditions" in ARM 12.7.805(3) that may be placed on contests. This section is too open for subjective interpretation. Clarify and define the terms. Environmental conditions must be tied to the specific species of fish in the contests and these conditions must be supported by scientific studies.

Response: Permit conditions are variable but will be based on identified factors specific to each proposed contest. Factors to be considered include all those items identified in ARM 12.7.803. Environmental conditions will take into consideration such issues as fish species, water temperatures, contest regulations, location, facility use and public issues. Biological and social considerations are equally important.

Comment 6: Preference should be given to fishing contests that have been held in the past rather than expect competing contests to work it out. This section wipes out the criteria used to evaluate each contest. There should not be any preference for any particular tournament.

Response: Language has been added to ARM 12.7.806 to provide a preference for contests that have been held in the past. It is only fair to continue to provide permits to longstanding events sponsored by local organizations before considering applications for new events.

Comment 7: Competing applicants should not work it out among themselves. The department should make these decisions rather than the applicants.

Response: Past opportunities to resolve conflict among applicants has worked out well. The department will make decisions when applicants are unable to reach agreement.

Comment 8: Delete the language in ARM 12.7.804 "have less impact on resources." This language is not needed.

Response: This change has been made.

Comment 9: The department should process applications within 90 days and deny applications or apply conditions only with justification. Sponsors should be able to appeal a denial or conditions.

Response: The current process does not allow comprehensive planning and coordination, and it supports a first-come first-served approach. The proposed changes will ensure that all applications are processed within 90 days of the last day for accepting applications and will allow for better planning on each lake/reservoir. Sponsors will then have an opportunity to appeal either a denial or any conditions placed on the permit.

Comment 10: The rules should be more specific about what "conditions" will be placed on contests to minimize fish mortality in catch-and-release contests, to regulate harvest, or to reduce user conflicts. Acceptable limits for delayed fish mortality must be identified. The department should look at the size of the lake/reservoir, fish populations, desirability of fish, etc. Limitations on contests should be based on science.

Response: The rules have never been specific about the conditions that may be imposed on a contest because conditions are contest-specific. The rules clarify that conditions will be based on the criteria described in ARM 12.7.803(1)(a) through (g). Conditions are based on science and potential public conflict, including impacts to the fisheries and public facilities that affect local anglers.

Comment 11: What does "significant" in ARM 12.7.805 mean and how will it be determined?

Response: Significant means "important and influential." The comments must be substantive, be based on biological or recreation conflict concerns and have merit.

Comment 12: All public comments should be available to contest sponsors upon request. Comments don't seem to make a difference.

Response: Department files are open for inspection during normal business hours and contest sponsors are welcome to review all comments. Public comments are taken into consideration along with statute and rule requirements.

Comment 13: Define parameters of angling ethics and aquatic ecology, in ARM 12.7.806. How many people is too many on a water body? The department needs to have a specific range or number.

Response: Fisheries managers must balance the biological needs of a fishery with the social and political demands for recreational fishing opportunities. These decisions are based on the biological science available and public interest. There is no easy formula for determining the appropriate balance. Decisions are based on site-specific considerations and will vary from contest to contest.

Comment 14: Delete the section in ARM 12.7.805 that disallows contests on consecutive weekends or provide specific criteria. Change the language addressing holiday weekends to cover only the legal 3-day weekends of Memorial Day, 4th of July and Labor Day.

Response: Public comment over the past few years has requested that there be times when no contests are allowed, a time when recreational anglers can enjoy the lake/reservoir without the potential for an extra 100 or more anglers to be competing for prizes. The rule as proposed provides a few weekends for this opportunity. Holiday weekends would also include winter holidays for ice fishing contests, Mother's Day, Father's Day, Columbus Day and Veteran's Day. Only May and November have two holiday weekends, and several months have no holidays.

Comment 15: ARM 12.7.805(4) prohibits contests on consecutive weekends on any body of water less than 100,000 surface acres. 100,000 surface acres is over 156 square miles of water. Only Flathead Lake and Ft. Peck Reservoir are larger than that. Canyon Ferry isn't even over 100 square miles. This is too restrictive.

Response: These two waters have the best ability to accommodate tournaments on consecutive weekends without impacting other recreational users. Limited access and increasing use is a concern on most lakes/reservoirs.

Comment 16: ARM 12.7.805 is not restrictive enough. It would allow consecutive weekend contests on Fort Peck and this is in conflict with the desires of most anglers in the state. This section should be revised to allow only one event per month on each body of water, regardless of size, and never on consecutive weekends.

Response: The potential for recreational conflict will continue to be evaluated and there will be an opportunity to further limit contests on a water body based on identified conflict.

Comment 17: In ARM 12.7.805(2)(e), delete "recreational conflict" as a basis for public opposition. Any biological concerns should be made available to sponsors on request within 10 working days. The department must be able to scientifically defend any denials of applications.

Response: The department has a responsibility to protect and preserve our fisheries resources for the enjoyment of all. Recreational conflict is a growing issue and must be considered in making a decision to issue a fishing contest permit.

Comment 18: More than one contest in any month on any lake/reservoir would be in conflict with most users. This should be specified.

Response: The number of acceptable contests is determined on a water-by-water basis.

Comment 19: Incidental catch of listed or species of special concern should be eliminated or minimized to the greatest extent possible. Catch-and-release contests should minimize damage or mortality to fish by using single or circle hooks, artificial lures or other methods. Bait should not be used in catch-and-release contests due to higher mortality of released fish.

Response: These suggestions will be considered on a case-by-case basis and utilized as permit conditions where appropriate.

Comment 20: Contests for illegally introduced species should be catch and keep to assist in reducing illegally introduced fish and help protect native populations.

Response: These decisions are generally made in management planning for specific waters but may also be considered as a permit condition for a specific contest.

Comment 21: For catch-and-release contests, go back to the old format of only three fish in the boat and then you have to weigh them in.

Response: This is a good option to consider on a case-by-case basis to decrease mortality in catch-and-release contests, especially during warmer months.

Comment 22: Until it can be demonstrated that central weigh-in formats do not result in any mortality, these events should not be authorized. What is a successful catch-and-release contest? Is 1%, 5% etc. mortality acceptable?

Response: Studies on catch-and-release angling indicate that there is about 5% mortality with artificial lures and about 25% mortality with bait. Based on a Texas study, some level of mortality (at least 5% to possibly 25%) is acceptable in contests, but there seems to be significant opposition to catch-and-release tournaments with mortality exceeding 40%.

Comment 23: Fishing contests don't need boundaries on bass contests. What is the rationale (science) for this requirement? Specify the criteria for placing boundaries on a contest.

Response: Boundaries are placed on weigh-in type contests to minimize fish mortality resulting from lengthy boat rides in livewells, especially during rough conditions. Criteria are specified in ARM 12.7.803(1)(a) through (g).

Comment 24: Sponsors must notify the department within 20 working days that conditions or modifications are not acceptable and that the sponsor is appealing the decision. An appeal will put the application on hold pending a final determination. NO NOTICE from the applicant should be required if the conditions or permit are acceptable.

Response: The department has added language to ARM 12.7.805(1) to clarify that applicants must notify the department only if modifications or conditions are not acceptable.

Comment 25: The department should notify the applicant of its decision via certified mail. Notices to the public should be both by newspaper and the department website.

Response: Regular mail has been adequate for sponsor notification since 1987. The department added language to ARM 12.7.805(6) to provide newspaper and website notification.

Comment 26: Simplify the language to say "within 30 days after the approved fishing contest, the contest sponsors must report to the department, on forms provided, the requested information at the time of application for the contest."

Response: Changes have been made in ARM 12.7.806 to clarify and simplify this requirement.

Comment 27: No tournament is non-harvest, they all have some mortality. Eliminate the word "harvest" from ARM 12.7.807. Contests should not target any species of special concern.

Response: "Harvest" has been removed from ARM 12.7.801(1).

Comment 28: Catch-and-release contests for sauger should be allowed. No fish are harvested.

Response: Targeting a species of special concern in a contest would be inappropriate. There is an increasing risk of mortality the longer a fish is handled. Releasing these fish immediately will have the least impact.

Comment 29: What makes a "species of special concern"? Who determines this?

Response: Based on scientific research, the American Fisheries Society recommends the listing of a species to the department. The Fisheries Division Administrator reviews the recommendation and determines if it will be forwarded to the department director for adoption. The Director makes the final decision.

Comment 30: The general terminology "species of special concern" in ARM 12.7.807 should be deleted. The department can add to the list of species whenever they need to.

Response: It is a lengthy process to change rules as well as to list a species. The intent to protect species of special concern is clear.

Comment 31: There are many instances where wild trout exist in mixed-stock reservoir fisheries (Canyon Ferry, Hauser, Holter, Flathead Lake, McGregor Lake) or where the department stocks a species of special concern.

Response: The language has been changed in ARM 12.7.807(2) to focus only on wild trout in streams. Contests on wild non-native trout in lakes may be allowed if consistent with management strategies for native species. For cutthroat trout, the language has been changed to allow contests on waters where the department stocks cutthroat trout.

Comment 32: The department can't say that no fish die in catch-and-release contests, but need the science for prohibiting all weigh-in contests between July 1 and September 15.

Response: Contests will be evaluated on a case-by-case basis.

Comment 33: Do not authorize any central weigh-in tournaments on public waters in Montana. Either ban these contests altogether or limit them from June 1 on.

Response: The decision to prohibit these contests is based on the impacts of each contest as determined by location, species of fish targeted, water temperatures, handling procedures, tournament rules, number of participants, etc. Impacts may be reduced or eliminated through a variety of requirements or modifications in tournament rules. If impacts cannot be minimized to an acceptable level, the contest will be denied.

Comment 34: Fishing contests provide economic value to the community. They bring in a lot of money. Tournaments are good for the hosting communities and good for Montana.

Response: A 2001 study of bass tournaments in Texas noted that non-local anglers participating in tournaments "spent an average of \$213 per trip in the local area surrounding the

reservoir." The study reported that "different size and type tournaments have varied economic impacts and additional research that reflects this range of sizes and types of bass tournaments is needed." A 1992 department estimate of economic value associated with angling projected that the typical angler spent \$91.60 per trip while fishing in Montana.

Comment 35: The only justifiable fishing contests are those targeting yellow perch, northern pike, northern pikeminnow, and any other rough fish.

Response: Walleye, bass and lake trout tournaments are popular in Montana.

Comment 36: Change the wording in ARM 12.7.808 to read that fish released will not be counted in your daily limit. No one knows what legally taken means.

Response: This change has been made.

Comment 37: Don't relax any daily or possession regulations for catch-and-release contests. The regulations are to protect these species and should not be changed on a temporary basis for a contest. Why should the tournament bass anglers be allowed to put fish in their livewell when no one else is allowed to just because they say they are releasing them after the weigh-in?

Response: Contest participants are required to have approved livewells (i.e. fully operational aeration systems and sufficient size to hold fish and minimize mortality).

By: /s/ M. Jeff Hagener
M. Jeff Hagener, Secretary
Fish, Wildlife and Parks
Commission

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

Certified to the Secretary of State April 1, 2002

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

In the matter of the adoption)
of a new rule regulating the) NOTICE OF ADOPTION
use of snowmobiles on open,)
public water)

TO: All Concerned Persons

1. On January 17, 2002, the Fish, Wildlife and Parks Commission (commission) published notice of the proposed adoption of new rule I, concerning the use of snowmobiles on open, public water at page 27 of the 2002 Montana Administrative Register, Issue Number 1.

2. The agency has adopted new rule I, ARM 12.11.331, exactly as proposed.

3. The following comments were received and appear with the commission's responses:

COMMENT 1: Snowmobiles are not safe on the water. They cannot be stopped or turned easily, thus endangering both the safety of the rider and the safety of others boating, fishing, or swimming in the same waters.

RESPONSE: The commission is concerned about public safety on the water and therefore has adopted the rule as proposed.

COMMENT 2: Water-skipping snowmobiles cause water pollution, shoreline damage, and fish and wildlife disruption.

RESPONSE: Although there would be some water pollution both from the use of snowmobiles on the water and the sinking of some, pollution regulation agencies are not concerned with the amount of pollution and thus the commission believes the pollution could be regulated to prevent problems any greater than using motorboats on the water. The commission agrees that substantial snowmobile use could damage the shoreline and disrupt fish and wildlife to their detriment in some areas. The rule will prohibit such activity.

COMMENT 3: Snowmobiles are noisy and water-skipping will increase conflict with other users if the sport is allowed on publicly accessible waters.

RESPONSE: The rule will address these issues by preventing such use.

COMMENT 4: This sport should not be allowed because snowmobiles are designed for snow, not water, and such use is absurd.

RESPONSE: The commission agrees that snowmobiles are not designed for safe water use.

COMMENT 5: The people who want to pursue this sport can do so on private ponds.

RESPONSE: Yes, with permission of the pond owner.

COMMENT 6: One comment opposed allowing special permitted contests and others asked that special events be allowed.

RESPONSE: The rule does not allow any water-skipping on publicly accessible waters. Such events may be held on private lakes and ponds. Permitting such events would require MEPA compliance, insurance coverage, and extensive public involvement. It is anticipated that the events would normally be held on weekends, the period of greatest recreational use of public waters by boaters, anglers, etc. Although there could be economic benefits to local businesses from such an event, it would disrupt normal summer recreation and would be costly and time consuming to complete the environmental and hearing processes, provide enforcement and rescue presence, protect the state from liability for permitting the event, and repair environmental damages. Not all of these costs could be shifted to the sponsor of the event.

COMMENT 7: A penalty should be included in the rule.

RESPONSE: Commission statutes have a penalty set by section 87-1-125, MCA: a fine of not less than \$50 nor more than \$500.

COMMENT 8: There is already too much regulation. Let people do what they want.

RESPONSE: The rule is necessary for public safety - much like many of the boating rules or highway laws that regulate safety to help prevent accidents.

COMMENT 9: Water-skipping is not a government concern. People have personal responsibility and it is not an appropriate role of government to protect them from themselves.

RESPONSE: The commission has a responsibility to be concerned about public safety. In this sport, not only the rider is at risk but also other persons recreating in the water.

COMMENT 10: Regulating this sport is improper; there are lots of other activities which can be dangerous. Is the state going to prohibit mountain climbing, rock climbing, hang

gliding, use of personal watercraft (PWC), water skiing, drag racing, floating rapids in an inner tube, etc.?

RESPONSE: The commission recognizes there are other sports that can be dangerous but are allowed, sometimes with no regulation. However, the totality of the circumstances surrounding water-skiing must be considered. Snowmobiles are not designed for water; they are unable to stop without sinking and difficult to turn when water-skiing. Conflicts with other recreational use and the danger to other recreators must be considered, as well as the possible environmental damage to shorelines, etc. The commission believes it is necessary to prohibit this use of publicly accessible water to protect the public safety and welfare.

COMMENT 11: Other states allow the activity. Why shouldn't Montana? If you're concerned about rescue costs, Colorado imposes a fee on hunting licenses to pay for service to people hurt or lost during outdoor activities.

RESPONSE: The department surveyed other states and received responses from 32 states. Four states prohibit water-skiing, including Colorado. Six other states believe it would be unlawful under their laws but it is not specifically addressed. Many of the states have no such activity to their knowledge. The Midwest states generally do not regulate the activity, except for sponsored events. Each state must consider its own circumstances in determining whether to allow or regulate this sport. In Montana the commission believes it is not in the public's best interest to allow the sport on the limited, often already congested, publicly accessible waters for the reasons given above.

COMMENT 12: You can't regulate stupidity.

RESPONSE: This is a sport that requires experience and care to avoid problems. Some participants are more careful than others. Many regulations by various agencies are intended to prevent problems by persons who may not be experienced or careful. Given the totality of the concerns with this sport, however, the commission has decided to prohibit it on publicly accessible waters.

COMMENT 13: You should allow the sport. It empties the gene pool. If you're concerned about costs, don't have rescue people respond.

RESPONSE: The commission is concerned about the safety of participants as well as the safety of other water recreators. This rule will not allow the sport on publicly accessible waters, but if someone is injured and needs help, they should receive the help they need.

COMMENT 14: You should allow members of the WSA WATERCROSS, or similar organizations to participate in the sport in compliance with the organization's rules.

RESPONSE: Membership in private organizations should not determine what is legal in Montana. The commission appreciates that the organization is concerned with the safety of its members and the events, but for the reasons given above does not believe the activity should be allowed on Montana's accessible waters.

COMMENT 15: There is no more risk to this sport than using PWC's, so why aren't you banning that use?

RESPONSE: PWC's are designed for use on water. They are more maneuverable than snowmobiles and stay afloat when they come to a stop on water. Although some PWC operators are inexperienced or careless, PWC's are safer than snowmobiles for water use. The number of PWC's on Montana's public waterways is already large and is increasing. Allowing snowmobiles, which are not designed for water use and not included in the boating safety laws, would increase the problems and conflicts.

COMMENT 16: You should allow water-skiing but provide safety requirements such as lifejackets. You never gave the emergency rule a chance to determine whether the rule worked to sufficiently regulate the sport. We were told there were no problems after the emergency rule went into effect.

RESPONSE: Making the emergency rule a permanent rule was one of the alternatives considered by the commission. The Enforcement Division reported that they did not have any complaints after the emergency rule took effect, but they also were not aware of any more water-skiing activity. Given the totality of the concerns and the comments from the public, the commission has chosen to prohibit the activity on public water rather than adopt the emergency rule permanently.

COMMENT 17: There will be enforcement costs associated with any rule, and we are concerned that the limited snowmobile funds will be used for enforcement of the regulation prohibiting water-skiing.

RESPONSE: Enforcing laws and rules regulating the use of Montana's public waters are funded through the boating safety program (U.S. Coast Guard funds and boat decal fees as well as other sources). Enforcement of this rule will be part of boating safety enforcement, and no snowmobile funds will be used.

COMMENT 18: The proposed rule is not enforceable. It isn't clear enough and doesn't address all situations. What if someone is traveling on ice and suddenly finds himself in

water? Is he in violation of the rule? What if he can't physically cross a stream perpendicular to the flow and has to go at an angle?

RESPONSE: It is true that the rule doesn't address every possible situation, but it is impossible to address every situation without creating other 'gray' areas. Law enforcement officers are trained and expected to use officer discretion in determining whether behavior violates a rule or is reasonable under the circumstances. If a person is traveling on ice and has to cross open water to protect himself from sinking, he is certainly not in violation of the rule. If he decides to go back and try it again, he would probably be cited. Crossing a stream where it is safer will be allowed if a direct crossing is not safe.

COMMENT 19: The public comment and hearing process is a waste of time. You've already made up your minds and what we say here doesn't matter.

RESPONSE: The commission adopted the emergency rule in August but was unwilling to ban the sport on publicly accessible waters because there had not been public comment. Before starting this rulemaking procedure, public comment was solicited and used in the decision to propose a permanent rule. A public comment period and two public hearings were scheduled to find out what the public thinks about a permanent rule. As can be seen by the above comments, the commission received good comments and suggestions on both sides of the issue. The commissioners have carefully considered those comments and believe that the rule as adopted best addresses the concerns and problems raised under their mandate to address public safety and welfare on publicly accessible water. They recognize that they unfortunately cannot address everyone's concerns to their satisfaction.

By:

By:

/s/ Dan Walker
Dan Walker, Chairman
Fish, Wildlife and Parks
Commission

/s/ Rebecca Dockter Engstrom
Rebecca Dockter Engstrom
Rule Reviewer

Certified to the Secretary of State April 1, 2002

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption)	CORRECTED NOTICE OF
of NEW RULE I and the)	AMENDMENT
amendment of ARM 17.30.502,)	
17.30.602, 17.30.607 through)	
17.30.611, 17.30.621 through)	(WATER QUALITY)
17.30.629, 17.30.635,)	
17.30.641, 17.30.645,)	
17.30.646, 17.30.702,)	
17.30.715, 17.30.1001,)	
17.30.1006 and 17.30.1007,)	
pertaining to surface water)	
quality)	

TO: All Concerned Persons

1. On October 11, 2001, the Board of Environmental Review published a notice of the proposed adoption and amendment of the above-stated rules at page 1920, 2001 Montana Administrative Register, issue number 19. On February 14, 2002, the Board published the notice of adoption and amendment of the rules at page 387, 2002 Montana Administrative Register, issue number 3.

2. This corrected notice of amendment is being published to reflect how ARM 17.30.610 should have been renumbered in the original proposal. ARM 17.30.622 should have been amended in the adoption notice to reflect the correct edition of the Water Quality Standards Handbook the Board is incorporating by reference. The amendments are shown below.

17.30.610 WATER-USE CLASSIFICATIONS--MISSOURI RIVER DRAINAGE EXCEPT YELLOWSTONE, BELLE FOURCHE, AND LITTLE MISSOURI RIVER DRAINAGES (1) through (1)(e)(ii) remain the same as proposed.

(iii) Judith River drainage except waters listed in ~~(i)~~ (1)(e)(iii)(A) through ~~(iv)~~ (D) belowB-1

(i) through (iv) remain the same, but are renumbered (A) through (D).

(e)(iv) remains the same as proposed.

(v) Musselshell River drainage to Deadman's Basin diversion canal above Shawmut except for the water listed in ~~(i)~~ (1)(e)(v)(A) belowB-1

(i) remains the same, but is renumbered (A).

(vi) Musselshell River drainage below Deadman's Basin diversion canal above Shawmut except for the waters listed in ~~(i)~~ (1)(e)(vi)(A) through ~~(iv)~~ (D) below.C-3

(i) through (iv) remain the same, but are renumbered (A) through (D).

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

17.30.622 A-1 CLASSIFICATION STANDARDS (1) through (3)(i) remain the same as proposed.

(j) If site-specific criteria are developed using the procedures given in the Water Quality Standards Handbook, Second Edition, ~~(US EPA, September 1993)~~ EPA-823-B-94-005a, August 1994, and provided that other routes of exposure to toxic parameters by aquatic life are addressed, the criteria so developed shall be used as water quality standards for the affected waters and as the basis for permit limits instead of the applicable standards in department Circular WQB-7.

(k) remains the same as proposed.

3. The replacement pages for these rules were filed with the Secretary of State's office on March 31, 2002.

BOARD OF ENVIRONMENTAL REVIEW

By: JOSEPH W. RUSSELL
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Reviewed by:

JAMES M. MADDEN
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, April 1, 2002.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 17.56.308 and 17.56.309)
pertaining to operating) (Underground Storage Tanks)
permits or compliance plans,)
and compliance inspections)

TO: All Concerned Persons

1. On January 31, 2002, the Department of Environmental Quality published an amended notice of public hearing on the proposed amendment of the above-stated rules at page 139, 2002 Montana Administrative Register, Issue No. 2.

2. The Department has amended the rules exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF ENVIRONMENTAL
QUALITY

By: Jan P. Sensibaugh
JAN P. SENSIBAUGH, Director

Reviewed by:

James Madden
JAMES MADDEN, Rule Reviewer

Certified to the Secretary of State, April 1, 2002.

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

In the matter of the adoption)	CORRECTED NOTICE OF
of new Rules I through X; the)	ADOPTION
transfer of ARM 16.32.601,)	
16.32.621, 16.32.623,)	
16.32.624 and 16.32.627, the)	
transfer and amendment of ARM)	
16.32.602, 16.32.607,)	
16.32.608, 16.32.609,)	
16.32.610, 16.32.615,)	
16.32.616, 16.32.617,)	
16.32.622, 16.32.640,)	
16.32.644, 16.32.645,)	
16.32.646, 16.32.650 and)	
16.32.651 and the repeal of)	
16.32.630 pertaining to)	
minimum standards for mental)	
health centers)	

TO: All Interested Persons

1. On October 11, 2001, the Department of Public Health and Human Services published notice of the proposed adoption, amendment, transfer and repeal of the above-stated rules at page 1962 of the 2001 Montana Administrative Register, issue number 19, and on March 28, 2002 published notice of the adoption, amendment, transfer and repeal on page 916 of the 2002 Montana Administrative Register, issue number 6.

2. This corrected notice is being filed to correct an error in the numbering of new rules II through X.

3. The rules are corrected as follows:

	<u>INCORRECT</u>	<u>CORRECT</u>	
RULE II	37.106.1955	37.106.2001	Mental Health Center: Foster Care for Adults With Mental Illnesses
RULE III	37.106.1958	37.106.2004	Mental Health Center: Foster Care for Adults With Mental Illnesses, Policy and Procedures
RULE IV	37.106.1959	37.106.2005	Mental Health Center: Foster Care for Adults With Mental Illnesses, Records

RULE V	37.106.1960	37.106.2006	Mental Health Center: Foster Care for Adults With Mental Illnesses, Staff Supervision and Training
RULE VI	37.106.1961	37.106.2011	Mental Health Center: Foster Care for Adults With Mental Illnesses, Adult Foster Care Specialist
RULE VII	37.106.1965	37.106.2015	Mental Health Center: Foster Care for Adults With Mental Illnesses, Client Admission Criteria and Needs Assessment
RULE VIII	37.106.1966	37.106.2016	Mental Health Center: Foster Care for Adults With Mental Illnesses, Treatment Plan
RULE IX	37.106.1967	37.106.2017	Mental Health Center: Foster Care for Adults With Mental Illnesses, Client Placement Agreements
RULE X	37.106.1968	37.106.2018	Mental Health Center: Foster Care for Adults With Mental Illnesses, Client Rights and Responsibilities

4. The rules were incorrectly numbered. This notice is to correct this numbering error.

5. All other rule changes adopted/amended/transferred and repealed remain the same.

6. Replacement pages for this corrected notice were submitted to the Secretary of State on March 31, 2002.

Russell E. Cater
Rule Reviewer

Russell E. Cater for Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State April 1, 2002.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION AND
of new rule I (42.4.110), II) AMENDMENT
(42.4.111), VI (42.4.112), VII)
(42.4.113), VIII (42.4.114), IX)
(42.4.115), X (42.4.116), XI)
(42.4.117), and XII (42.4.118))
and amendment of ARM 42.22.1311)
and 42.23.513 relating to)
exemptions, reduced tax rates,)
and credits for energy)
facilities)

TO: All Concerned Persons

1. On February 14, 2002, the department published notice of the proposed adoption of new rules I (42.4.110), II (42.4.111), VI (42.4.112), VII (42.4.113), VIII (42.4.114), IX (42.4.115), X (42.4.116), XI (42.4.117) and XII (42.4.118) and amendment of ARM 42.22.1311 and 42.23.513 relating to tax exemptions, reduced tax rates, and credits for energy facilities at page 369 of the 2002 Montana Administrative Register, Issue Number 3.

2. A public hearing was held on March 12, 2002, to consider the proposed adoption and amendment. Written and oral comments were received during and subsequent to the hearing. Those comments pertain only to the adoption of new rules III, IV and V. Individuals who appeared at the hearing requested an additional 30 days to prepare and submit amendments for these three proposed new rules. The period set for close of comment in the notice published by the department was March 22, 2002. The department does not believe that it can extend the comment period beyond March 22, 2002, without providing adequate notice to all interested parties.

Therefore, the department has decided not to adopt new rules III, IV and V at this time. A new notice of hearing (MAR Notice No. 42-2-690) is published in this register, which will afford the public another opportunity to provide suggested amendments and comments orally or in writing regarding those three rules.

3. The department has amended New Rule VIII (42.4.114) with the following changes to clarify the need to include equipment and machinery that is not only in the ownership, but also in their use:

NEW RULE VIII (42.4.114) PROPERTY TAX EXEMPTION - NON-COMMERCIAL ELECTRICAL GENERATION MACHINERY AND EQUIPMENT

(1) In order to obtain a property tax exemption for non-commercial electrical generation machinery and equipment, the property owner of record or the property owner's agent must

notify the department on its annual reporting form that the existence of non-commercial electrical generation machinery and equipment is in their ownership OR USE.

(2) remains the same.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-226, 75-2-211, and 75-2-215, MCA

4. Therefore, the department adopts new rule VIII (42.4.114) with the amendments listed above. The department adopts new rules I (42.4.110), II (42.4.111), VI (42.4.112), VII (42.4.113), IX (42.4.115), X (42.4.116), XI (42.4.117) and XII (42.4.118) and amends ARM 42.22.1311 and 42.23.513 as proposed.

5. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State April 1, 2002

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 42.15.315, 42.23.605,)
42.23.607, and 42.23.608)
relating to interest charges)
for late filed and late paid)
penalties)

TO: All Concerned Persons

1. On February 14, 2002, the department published notice of proposed amendment of ARM 42.15.315, 42.23.605, 42.23.607, and 42.23.608 relating to interest charges for late filed and late paid penalties at page 352 of the 2002 Montana Administrative Register, issue no. 3.

2. A public hearing was held on March 7, 2002, to consider the proposed amendments. No comments were received at the hearing. However, prior to the hearing, at a Stakeholders Advisory Committee Meeting, Ms. Mary Whittinghill, Executive Director for the Montana Taxpayers Association (MTA), asked questions regarding two of the rules. Based on those questions, the department reviewed the rules further and determined additional amendments were warranted. The proposed amendments were presented at the hearing to the attendees, including Ms. Whittinghill. No comments were received regarding these amendments.

3. The additional amendments to ARM 42.23.315 and 42.23.605 are necessary for the following reasons:

Deleting the reference to "underpayment interest" in ARM 42.15.315 and 42.23.605 is necessary to clarify that the change in the rules only applies to late file and late pay penalties, not "underpayment interest." If the text of the rule remained as originally proposed, additional interest would be incurred for future tax years where an amended return was filed, and that was not the intent of these amendments.

New (8) for ARM 42.15.315 and (5) for ARM 42.23.605 are necessary to foster voluntary compliance with the tax laws by encouraging taxpayers to file amended returns when appropriate and not penalizing them for doing so.

The amendments to (11) and (12) in ARM 42.15.315 and (1) in ARM 42.23.605 are necessary to clarify that these sanctions apply only to the original return.

New (13) in ARM 42.15.315 is necessary to clarify the taxpayer's appeal rights with regard to adjustments and corrections made to an amended return, and to keep this rule consistent with the application in ARM 42.23.605.

4. The department has amended ARM 42.15.315 and 42.23.605 with the following changes:

42.15.315 ORIGINAL RETURN DEFINED (1) through (6) remain as proposed.

(7) For tax years beginning January 1, 2001, the late file and late pay penalties, ~~and underpayment interest, as provided in 15-30-241, MCA,~~ will be adjusted based on the corrected amount of tax due, which results from an amended return, adjustment from an audit, or correction to the original return.

(8) A LATE PAY PENALTY WILL NOT BE ASSESSED ON AN AMENDED RETURN, ADJUSTMENT FROM AN AUDIT, OR CORRECTION FOR WHICH THE ORIGINAL RETURN WAS FILED AND PAID ON OR BEFORE THE DUE DATE, INCLUDING EXTENSIONS. IF ANY ADDITIONAL BALANCE DUE IS NOT PAID WITHIN 60 DAYS OF THE DEPARTMENT'S NOTICE, AS PROVIDED IN 15-30-142, MCA, THE LATE PAY PENALTY REQUIRED IN 15-1-216, MCA, WILL APPLY.

(8) and (9) remain as proposed but are renumbered (9) and (10).

~~(10)~~ (11) An extension of time to file AN ORIGINAL return does not extend the time to pay. When a AN ORIGINAL return is filed before the extension date and payment is not made, the return is subject to late pay penalties.

~~(11)~~ (12) If an extension of time to file has been made and the ORIGINAL return was not filed before the extension deadline, the ORIGINAL return is subject to late file and late pay penalties.

(13) THE APPEAL PROCESS, PROVIDED IN ARM 42.2.613 THROUGH 42.2.621, WILL APPLY TO ADJUSTMENTS AND CORRECTIONS MADE BY THE DEPARTMENT TO A FILED AMENDED RETURN.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-1-216, 15-30-142, 15-30-149, 15-30-241, and 15-30-321, MCA

42.23.605 PENALTY ON DEFICIENCY ASSESSMENTS AND INTEREST

(1) Whenever a deficiency assessment is made by the department pursuant to 15-31-503, MCA, BASED ON THE ORIGINAL RETURN, the tax becomes final as provided in 15-31-503, MCA, and the payment for the deficiency is due within 30 days as stated on the notice of deficiency assessment. If the payment is not made by the end of this period, the taxpayer is subject to imposition of a penalty of 1.5% per month, not to exceed 18% of the tax due, as provided in 15-1-216, MCA.

(2) remains as proposed.

(3) For tax years beginning on or after January 1, 2001, the late file and late pay penalties, ~~and underpayment interest, as provided in 15-31-510, MCA,~~ will be adjusted based on the corrected amount of tax due, which results from an amended return, adjustment from an audit, or correction to the original return.

(4) remains as proposed.

(5) A LATE PAY PENALTY WILL NOT BE ASSESSED ON AN AMENDED RETURN, ADJUSTMENT FROM AN AUDIT, OR CORRECTION FOR WHICH THE ORIGINAL RETURN WAS FILED AND PAID ON OR BEFORE THE DUE DATE, INCLUDING EXTENSIONS. IF ANY ADDITIONAL BALANCE DUE IS NOT PAID WITHIN 60 DAYS OF THE DEPARTMENT'S NOTICE, THE LATE PAY PENALTY

REQUIRED IN 15-1-216, MCA, WILL APPLY.

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

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-1-216, 15-1-222, 15-31-502, 15-31-503, and 15-31-510, MCA

5. The department has amended ARM 42.23.607 and 42.23.608 as proposed and amended ARM 42.15.315 and 42.23.605 with the additional amendments listed above.

6. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State April 1, 2002

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 42.18.106, 42.18.107,)
42.18.109, 42.18.110,)
42.18.112, 42.18.113,)
42.18.115, 42.18.116,)
42.18.118, 42.18.119,)
42.18.121, and 42.18.122)
relating to Montana appraisal)
plan rules)

TO: All Concerned Persons

1. On February 14, 2002, the department published notice of proposed amendment of the above-stated rules relating to Montana appraisal plan rules at page 356 of the 2002 Montana Administrative Register, issue no. 3.

2. A public hearing was held on March 13, 2002, to consider the proposed amendments. No one appeared to testify and no written comments were received.

3. The department has amended the rules as proposed.

4. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State April 1, 2002

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Department of Public Service Regulation; and
- Office of the State Auditor and Insurance Commissioner.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Revenue and Transportation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2001. This table includes those rules adopted during the period January 1, 2002 through March 31, 2002 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2001, 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 2001 and 2002 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.

GENERAL PROVISIONS, Title 1

1.2.419 Filing, Compiling, Printer Pickup and Publication Schedule for the Montana Administrative Register, p. 2130, 2433

ADMINISTRATION, Department of, Title 2

I Montana's Volume Cap Allocation, p. 2196, 2456
I-VII Approved Investments for Montana Banks - Investment Policies, p. 2066
I-VIII State Vehicle Use, p. 1386, 2013
2.4.101 and other rules - Regulation of Travel Expenses, p. 2198, 2455
2.5.201 and other rules - State Procurement of Supplies and Services, p. 1498, 2009
2.21.1803 and other rule - Exempt Compensatory Time Policy, p. 1699, 2133

(Public Employees' Retirement Board)
2.43.302 and other rules - Retirement Systems Administered by the Montana Public Employees' Retirement Board, p. 1222, 1834, 2219

(State Fund)

2.55.319 and other rules - Multiple Rating Tiers - Premium Modifiers - Individual Loss Sensitive Dividend Distribution Plan - Premium Rates, p. 2073, 164

(Banking and Financial Institutions)

2.59.107 Investments of Financial Institutions, p. 136, 901
2.59.112 and other rules - Approved Investments for Montana Banks - Investment Policies, p. 2066, 166

(State Board of County Printing)

8.91.101 and other rules - Transfer from the Department of Commerce - State Board of County Printing, p. 2406

(State Lottery Commission)

8.127.101 and other rules - Transfer from the Department of Commerce - State Lottery Commission, p. 2407

(Burial Preservation Board)

8.128.101 and other rules - Transfer from the Department of Commerce - Burial Preservation Board, p. 2409

AGRICULTURE, Department of, Title 4

4.12.402 and other rules - Feed Penalties, p. 1, 778
4.12.3104 and other rules - Seeds - Labeling - Analysis Fees, p. 2278, 70
4.14.301 and other rule - Loan Qualifications, p. 1231, 1723, 71

STATE AUDITOR, Title 6

I-XVIII Life Insurance Illustrations, p. 1244, 2234
I-XX Formation and Regulation of Captive Insurance Companies, p. 2351, 171
6.6.302 and other rules - Life Insurance and Annuities Replacement, p. 1259, 2221
6.6.802 and other rule - Annuity Disclosures - Updating References to the Buyer's Guide Contained in Appendix A, p. 1275, 2239
6.6.4202 and other rules - Continuing Education Program for Insurance Producers and Consultants, p. 1161, 1511, 1702, 2134, 2457
6.10.121 Registration and Examination of Securities Salespersons, Investment Adviser Representatives, Broker-Dealers, and Investment Advisers, p. 2283, 73

COMMERCE, Department of, Title 8

(Community Development Division)

I Administration of the 2002 Federal Community Development Block Grant Program, p. 2449
I Application to the Treasure State Endowment Program (TSEP), p. 2447, 524

I Administration of the 2001 Treasure State Endowment Program (TSEP), p. 1173, 2019

(Board of Research and Commercialization Technology)
8.100.104 and other rule - Definitions - Application Procedures, p. 2203, 74

(Hard-Rock Mining Impact Board)
8.104.101 and other rules - Organizational Rule - Rules Governing Awarding of Grants, p. 425

(Board of Housing)
I-XV Affordable Housing Revolving Loan Fund - TANF Housing Assistance Funds, p. 1513, 75

(Travel Promotion and Development Division)
8.119.101 Tourism Advisory Council, p. 1278, 1838

EDUCATION, Title 10

(Office of Public Instruction)
10.7.106A and other rules - Students Placed in Private Education Programs - Tuition, p. 855
10.7.112 and other rules - Establishment of Investment Accounts - Spending Accounts - Agreement with the County Treasurer - Payments into an Investment Account - Controls and Accounting Records - Closure of a School District Fund - Cash and Budget Transfers Between School District Funds - School Flexibility Payment - Basic Equalization Levy Shortfall, p. 825
10.13.307 and other rules - Traffic Education, p. 6
10.41.101 and other rules - Vocational Education, p. 1784, 2206, 780

(Board of Public Education)
10.55.601 Accreditation Standards and Procedures, p. 2359, 172
10.57.211 and other rules - Model Rules - Teacher Certification - Testing for Certification and Minimum Scores, p. 867

FISH, WILDLIFE, AND PARKS, Department of, Title 12

12.9.601 and other rules - Upland Game Bird Release Program, p. 1280, 1725, 2020
12.9.802 and other rules - Issuance of Supplemental Game Damage Licenses to Hunters in Lieu of Kill Permits, p. 20

(Fish, Wildlife, and Parks Commission)
I Regulating the Use of Snowmobiles on Open Public Water, p. 27
12.3.124 and other rules - Clarifying Procedures of the Bonus Point System, p. 1802, 2287

- 12.3.402 Refunding of the Two-day Resident Fishing License,
p. 17
- 12.7.801 and other rules - Fishing Contest Regulations, p. 29
- (Department of Fish, Wildlife, and Parks and the Fish, Wildlife,
and Parks Commission)
- 12.2.501 Declaring Black-tailed and White-tailed Prairie Dogs
to be Nongame Wildlife in Need of Management,
p. 1806, 526

ENVIRONMENTAL QUALITY, Department of, Title 17

- I Air Quality - Air Quality Fee Credit for Use of
Postconsumer Glass in Recycled Material, p. 1950,
529
- 17.36.101 and other rules - Subdivisions - Subdivision Review
Under the Sanitation and Subdivisions Act, p. 568
- 17.53.102 and other rules - Hazardous Wastes - Management of
Hazardous Wastes, p. 35, 789
- 17.56.105 and other rule - Underground Storage Tanks -
Variances - Issuance of Compliance Tags and
Certificates, p. 51
- 17.56.121 and other rules - Underground Storage Tanks -
Operating Permits - Operating Tags - Scope of
Compliance Inspections - Compliance Plans, p. 2080,
2459
- 17.56.308 and other rule - Underground Storage Tanks -
Operating Permits or Compliance Plans - Compliance
Inspections, p. 2452, 139

(Board of Environmental Review)

- 17.4.501 and other rules - Major Facility Siting - Regulation
of Energy Generation or Conversion Facilities and
Linear Facilities, p. 1874, 2410
- 17.8.101 and other rules - Air Quality - Definitions -
Incorporation by Reference of Current Federal
Regulations - Additional Conditions of Air Quality
Preconstruction Permit, p. 268
- 17.8.302 and other rule - Air Quality - Emission Guidelines
for Existing Small Municipal Waste Combustion Units,
p. 931, 2022
- 17.8.505 Air Quality - Air Quality Operation Fees, p. 1391,
2412
- 17.8.514 Air Quality - Open Burning Fees, p. 928, 2023
- 17.8.701 and other rules - Air Quality - Issuance of Montana
Air Quality Permits, p. 276
- 17.20.1607 and other rules - Major Facility Siting - Centerline
Approval for Linear Facilities, p. 1945, 2415
- 17.30.201 Water Quality - Water Quality Permit and
Authorization Fees, p. 2361, 382
- 17.30.502 and other rules - Water Quality - Surface Water
Quality, p. 1920, 387
- 17.30.2003 Water Quality - Enforcement Actions for
Administrative Penalties, p. 263

(Petroleum Tank Release Compensation Board)
17.58.336 Reimbursement of Claims, p. 1396, 2024

TRANSPORTATION, Department of, Title 18

I & II Collection of Motor Fuel Tax for Diesel Vehicles Found to have Dyed Fuel in the Supply Tank, p. 1704, 2147
18.8.101 and other rules - Maximum Allowable Weight - Definitions - Temporary Trip Permits - Special Vehicle Combinations - Insurance - Confiscation of Permits, p. 1522, 2142
18.9.101 and other rules - Motor Fuel Definitions - Late File and Pay Penalties when Filing Electronically - Off-highway Vehicle/Equipment - Dyed Special Fuel Allowance, p. 1399, 2143

(Transportation Commission)
18.6.211 Collection of Permit Fees for Outdoor Advertising Signs, p. 2208, 2465

CORRECTIONS, Department of, Title 20

20.9.101 and other rules - Youth Placement Committees, p. 618

JUSTICE, Department of, Title 23

23.3.127 and other rules - Driver Licensing and Identification Cards, p. 428
23.4.201 and other rules - Field Certification of Associated Equipment, p. 871
23.15.101 and other rules - Creating the Office of Victims Services, p. 1810
23.16.102 and other rules - Forms Used by the Department in Regulating Gambling - Gambling Applications - Video Gambling Machine Testing Fees, p. 308, 902

(Board of Crime Control)
I Authorizing Reimbursement to Counties for Detention of Indian Youth, p. 142, 305

LABOR AND INDUSTRY, Department of, Title 24

(Board of Architects)
8.6.101 and other rules - Transfer from the Department of Commerce - Board of Architects Rules, p. 173
8.6.405 and other rules - Licensure of Applicants Who Are Registered in Another State - Examinations - Renewals - Fees, p. 1408, 175

(Board of Athletics)
8.8.2501 and other rules - Transfer from the Department of Commerce - Board of Athletics Rules, p. 2148

8.8.2802 and other rules - Definitions - Licensing Requirements - Contracts and Penalties - Fees - Boxing Contestants - Physical Examination - Promoter-matchmaker and Inspectors - Club Boxing, p. 1009, 2150

(Board of Barbers)

8.10.101 and other rules - Transfer from the Department of Commerce - Board of Barbers Rules, p. 393
8.10.414 and other rule - Prohibition of Animals in Barbershops - Certain Records of Barber Schools, p. 1953, 176

(Board of Clinical Laboratory Science Practitioners)

8.13.301 and other rules - Application - Fees - Minimum Standards for Licensure - Continuing Education - Inactive Status - Reactivation of License - Notification of Denial or Disciplinary Action - Supervision, p. 636
8.13.306 Continuing Education Requirements, p. 914, 2416

(Board of Cosmetologists)

8.14.402 and other rules - Elimination of the Required Practical Examination for Cosmetologists, p. 465

(Board of Dentistry)

8.16.402 and other rules - Licensure of Dentists and Dental Hygienists - Application Requirements for Dentists and Dental Hygienists, p. 439

(State Electrical Board)

8.18.402 and other rules - Definitions - Licensee Responsibilities - Electrical Contractor Licensing - Licensure by Reciprocity or Endorsement - Renewals - General Responsibilities - Licensure of Out-of-State Applicants, p. 916, 2418

(Board of Hearing Aid Dispensers)

8.20.101 and other rules - Transfer from the Department of Commerce - Board of Hearing Aid Dispenser Rules, p. 349
8.20.402 and other rules - Fees - Examination - Pass/Fail Point - Minimum Testing and Recording Procedures, p. 819, 1412, 2422, 82

(Board of Funeral Service)

8.30.101 and other rules - Transfer from the Department of Commerce - Board of Funeral Service Rules, p. 790
8.30.406 and other rules - Examination - Continuing Education - Sponsors - Renewal, p. 1297, 84, 793

(Board of Nursing)

8.32.302 Nurse-Midwifery Practice - Fees - Nursing Tasks That May Be Delegated - General Nursing Tasks That May

Not Be Delegated - Executive Director
Qualifications, p. 1414, 2152

(Board of Optometry)

8.36.801 Therapeutic Pharmaceutical Agents, p. 884

(Board of Pharmacy)

8.40.101 and other rules - Transfer from the Department of
Commerce - Board of Pharmacy Rules, p. 904

8.40.401 and other rules - Substantive Pharmacy Rules -
Automated Data Processing - Certified Pharmacies -
Internship Regulations - Continuing Education for
Pharmacists - Dangerous Drug Act - Collaborative
Practice Agreement Requirements - Security of
Certified Pharmacy - Administration of Vaccines by
Pharmacists - Explosive Chemicals - Prescription
Copies for Legend Drugs, p. 1422, 178, 794

8.40.1301 and other rules - Pharmacy Technicians -
Registration of Pharmacy Technicians - Renewal,
p. 1447, 86, 796

(Board of Professional Engineers and Land Surveyors)

8.48.401 and other rules - Board Organization - Board
Meetings - Screening Panel - Applications -
Reclassification of Engineers and Land Surveyors -
Classification of Experience of Land Surveying
Applicants, p. 450

8.48.1105 Fees, p. 1169, 2288

(Board of Psychologists)

8.52.616 Fees, p. 1526, 2154

(Board of Public Accountants)

8.54.410 Fees, p. 1020, 1707, 2240

(Board of Real Estate Appraisers)

24.207.401 and other rules - Fees - Adoption of USPAP by
Reference - Qualifying Experience - Inactive
License/Certification, p. 144, 911

(Board of Realty Regulation)

8.58.301 and other rules - Definitions - Trust Account
Requirements - General License Administration
Requirements - Renewal - License Renewal - Late
Renewal - Continuing Property Management Education -
Continuing Property Management Education Reporting
Requirements, p. 1529, 2291

I Unemployment Insurance Matters - Voluntary Layoff,
p. 2090, 2466

8.70.101 and other rules - Building Codes Bureau -
Incorporation by Reference of Uniform Building Code
- Certification of Code Enforcement Programs -
Annual Report - Audit - Decertification of Code

- Enforcement Programs - Building Codes Education Fund
Assessment - Wiring Standards - Electrical Permit -
Electrical Inspections Fees - Incorporation by
Reference of Elevator Code - Certificates of
Inspection - Incorporation by Reference of Boiler
and Pressure Vessel Code - Fees - Boilers Exempted -
Boiler Inspections, p. 1536, 2293
- 8.70.104 and other rules - Transfer from the Department of
Commerce - Building Codes Bureau, p. 2301
- 24.16.9001 and other rules - Prevailing Wage Matters, p. 313
- 24.29.2814 Emergency Amendment - Uninsured Employers' Fund
Administrative Costs Balance, p. 907
- 24.30.102 Occupational Safety and Health Standards for Public
Sector Employment, p. 887
- 24.301.107 and other rules - Building Codes - Modifications to
the Uniform Building Code Applicable Only to the
Department's Code Enforcement Program - Adoption of
the Uniform Housing Code or the Uniform Code for the
Abatement of Dangerous Buildings, p. 345
- (Workers' Compensation Judge)
- 24.5.303 and other rules - Procedural Rules of the Court,
p. 2211, 93

LIVESTOCK, Department of, Title 32

- (Board of Horse Racing)
- 8.22.301 and other rules - Transfer from the Department of
Commerce - Board of Horse Racing Rules, p. 642
- (Board of Livestock)
- 32.2.401 Various Fees Charged by the Department of Livestock
for Inspecting Livestock, p. 724

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- (Board of Oil and Gas Conservation)
- 36.22.1242 Privilege and License Tax Rates on Oil and Gas,
p. 1576, 2243
- (Board of Land Commissioners and Department of Natural Resources
and Conservation)
- 36.25.110 Minimum Rental Rate for Grazing Leases under the
Jurisdiction of the State Board of Land
Commissioners, p. 756, 2030

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I Licensure of Minimum Standards for Critical Access
Hospital (CAH), p. 1956, 205
- 16.4.101 and other rules - Distribution of Funds for Local
Health Services, p. 1580, 2244

- 16.10.101 and other rules - Transfer from the Department of Health and Environmental Sciences - Food and Drug Standards, p. 2423
- 16.10.630 and other rules - Transfer from the Department of Health and Environmental Sciences - Public Accommodations, p. 2425
- 16.10.1601 and other rules - Transfer from the Department of Health and Environmental Sciences - Minimum Sanitation Requirements for Tattooing, p. 2429
- 16.22.101 and other rules - Fluoridation of Public Water Supplies, p. 1578, 2245
- 16.28.101 and other rules - Transfer from the Department of Environmental Sciences - Communicable Disease Control, p. 913
- 16.30.102 and other rules - Transfer from the Department of Health and Environmental Sciences - Emergency Medical Services, p. 2305
- 16.32.101 and other rules - Transfer from the Department of Health and Environmental Sciences - Licensure of Health Care Facilities, p. 185
- 16.32.302 Health Care Licensure, p. 1959, 192
- 16.32.601 and other rules - Minimum Standards for Mental Health Centers, p. 1962, 916
- 16.38.290 and other rules - Transfer from the Department of Health and Environmental Sciences - Approval of Laboratories - Laboratory Fees - Prenatal and Premarital Test Requirements, p. 2246
- 37.5.304 and other rules - Child Care Assistance and Hearing Appeal Rights, p. 727
- 37.8.101 and other rules - Vital Statistics, p. 2373, 397
- 37.40.905 and other rules - Medicare and Medicaid Cross-over Pricing, p. 1709, 2156
- 37.50.315 Foster Care Classification Model, p. 774
- 37.70.304 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1453, 2037
- 37.76.101 and other rules - Temporary Assistance for Needy Families (TANF), p. 149, 952
- 37.85.204 and other rules - Independent Diagnostic Testing Facilities - Medicaid Reimbursement, p. 56, 797
- 37.85.212 and other rules - Emergency Amendment - Medicaid Reimbursement, p. 94
- 37.86.2207 and other rules - Mental Health Services, p. 503
- 37.86.2207 and other rules - Emergency Adoption and Amendment - Mental Health Services, p. 193
- 37.86.2207 Medicaid Mental Health Services, p. 1044, 2041
- 37.86.2401 and other rules - Medicaid Transportation and Ambulance Services, p. 759, 1183, 2247
- 37.86.4401 and other rules - Rural Health Clinics (RHC) - Federally Qualified Health Centers (FQHC), p. 1301, 2043
- 37.95.102 and other rules - Licensure of Day Care Facilities, p. 483
- 37.108.507 Components of Managed Care Plan Quality Assessment Activities, p. 349, 954

37.114.799 Communicable Disease Control, p. 891

PUBLIC SERVICE REGULATION, Department of, Title 38

I Electronic Filings, p. 1582, 398
38.5.1107 Accrual of Interest on Customer Deposits with
Utilities, p. 893
38.5.2202 and other rule - Pipeline Safety, p. 2093, 2467
38.5.8001 General Requirement to Obtain License to Supply
Electricity, p. 521

REVENUE, Department of, Title 42

I Production Threshold for Beer Taxes, p. 379, 955
I & II Purchase of Tax Sale Certificates, p. 1996, 2431
42.15.315 and other rules - Penalties and Interest Charges for
Late Filed and Late Paid Taxes, p. 352
42.18.106 and other rules - Montana Appraisal Plan Rules,
p. 356
42.19.1102 and other rule - Treatment of Gasohol Production
Facilities, p. 65, 811
42.21.113 and other rules - Trending Schedules for Property
Tax Rules, p. 1814, 2249
42.22.104 Motor Vehicles and Special Mobile Equipment,
p. 2403, 99
42.22.1311 and other rules - Exemptions - Reduced Tax Rates -
and Credits for Energy Facilities, p. 369
42.23.103 Corporation License Taxes, p. 1600, 2046
42.23.413 Carryovers of Net Operating Losses for Corporation
License Taxes, p. 2127, 2468, 207
42.24.102 and other rules - Special Provisions Applicable to
Corporation License Taxes, p. 1615, 2047
42.25.1809 and other rule - Tax Rates and Distribution of Oil
and Gas Proceeds, p. 1588, 2048
42.26.101 and other rules - Corporation Taxes, p. 2096, 2469,
403
42.29.101 and other rules - Universal System Benefits Credits,
p. 2216, 209
42.31.501 and other rules - Retail Communications Excise Tax,
p. 2399, 68, 956

SECRETARY OF STATE, Title 44

I-XII Fees for Records Management Microfilming, Imaging
and Storage Services, p. 837, 1186, 1748, 2161
1.2.419 Filing, Compiling, Printer Pickup and Publication
Schedule for the Montana Administrative Register,
p. 2130, 2433
1.2.421 and other rules - Fees for Administrative Rules of
Montana and Montana Administrative Register, p. 834,
1185, 2159
44.3.1101 Schedule of Fees for the Centralized Voter File,
p. 896

- 44.5.101 and other rules - Filing and Copy Fees for Corporations, p. 2000, 2472, 960
 - 44.6.201 and other rule - Uniform Commercial Code Filings (UCC), p. 898
 - 44.15.102 and other rules - Filing Fees for Notary Public Licensure - Bonding Requirements - Notarial Acts under Federal Authority and Foreign Notarial Acts, p. 1720, 2162
- (Commissioner of Political Practices)
- 44.10.101 and other rules - Organizational - Procedural - Campaign Finance and Practices - Ethics Rules, p. 1619, 2049