MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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NOTICE SECTION

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through III, the amendment of ARM 17.4.501, 17.4.502, 17.20.301, 17.20.302, 17.20.801, 17.20.802, 17.20.803, 17.20.805, 17.20.807, 17.20.811, 17.20.817, 17.20.818, 17.20.901, 17.20.907, 17.20.929, 17.20.1301, 17.20.1302, 17.20.1311, 17.20.1418, 17.20.1426, 17.20.1501, 17.20.1502, 17.20.1503, 17.20.1504, 17.20.1509, 17.20.1511, 17.20.1512, and 17.20.1604, and the repeal of ARM 17.20.101 through 17.20.108, 17.20.501 through 17.20.506, 17.20.701 through 17.20.704, 17.20.812, 17.20.816, 17.20.902 through 17.20.906, 17.20.908 through 17.20.911, 17.20.1201 through 17.20.1203, 17.20.1303, 17.20.1309, 17.20.1310, 17.20.1401 through 17.20.1405, 17.20.1408 through 17.20.1412, 17.20.1415 through 17.20.1417, 17.20.1419 through 17.20.1421, and 17.20.1601 through 17.20.1603, pertaining to regulation of energy generation or conversion facilities and linear facilities	NOTICE OF PROPOSED ADOPTION, AMENDMENT AND REPEAL (MAJOR FACILITY SITING) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 16, 2001, the Board of Environmental Review proposes to adopt, amend and repeal the above-stated rules pertaining to regulation of energy generation or conversion facilities and linear facilities.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., October 29, 2001 to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

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

17.4.501 OPPORTUNITY FOR PUBLIC COMMENT AFTER APPLICATION ~~COMPLETE~~ RECEIVED (1) Within ~~1~~ one month after an application is ~~declared complete~~ received pursuant to 75-20-216, MCA, the department shall publish notice of the following:

(a) the name and address of the applicant; a general description of the size, purpose and pollutants discharged from the proposed facility; solid or hazardous wastes generated; any other aspects of the proposed facility which require a permit or license from the department; and the location of ~~the~~ any alternative sites;

(b) if an MPDES permit must be obtained, the name of the state water receiving the discharge, a brief description of the discharge's location, and whether the discharge is new or existing~~.~~;

(c) through (g) remain the same.

(2) Notice of the opportunity for public comment described in (1) of this rule must be published as follows:

(a) publishing legal notice ~~2~~ two times within ~~2~~ two weeks in a newspaper of general circulation in Butte, Missoula, Helena, Great Falls, Miles City, Kalispell, and Billings, and in a newspaper of general circulation ~~published~~ within 50 miles of the site of the proposed facility and any alternative site;

(b) remains the same.

(c) mailing to any person, group, or agency upon written request, and to the following state agencies:

(i) environmental quality council;

(ii) department of public service regulation;

(iii) department of fish, wildlife and parks;

(iv) department of ~~state lands~~ natural resources and conservation;

(v) department of ~~community affairs~~ commerce;

(vi) department of transportation; and

(vii) remains the same.

AUTH: 75-2-111, 75-5-201, ~~75-20-216(3)~~ 75-20-105, MCA
IMP: 75-20-216(3), MCA

REASON: 17.4.501 is proposed for amendment because the current rule limits the department to waiting until an application is complete before starting the public scoping process. The proposed change would accelerate the initial scoping meetings so that they would occur within 30 days of receiving an application. Up to 60 days could be saved during the application review period by making this change.

17.4.501(1)(a) is proposed for amendment to qualify the phrase regarding alternative sites because only alternative sites can be required for linear facilities or as a mitigating measure for off-site associated facilities under 75-20-301, MCA.

The term "published" is proposed for deletion because it is possible that in some parts of the state a project may be

more than 50 miles from the location of where a newspaper is published.

The former agency name "department of state lands", which no longer exists, has been changed to reflect the current agency name, "department of natural resources and conservation", which now manages state lands. Similarly, the "department of community affairs" no longer exits, and its functions are now exercised by the "department of commerce". Other changes are not substantive and are made to conform to grammar and style preferred by the Secretary of State.

17.4.502 PUBLIC HEARING AFTER PRELIMINARY DECISION

(1) ~~Within 7 months after~~ After an application for a certificate is accepted as complete, the department shall:

(a) make a preliminary decision whether to grant or deny relevant permits for the ~~primary~~ proposed site and each alternative ~~site~~ location for which approval is sought; and

(b) remains the same.

(2) The notice of public hearing shall be published as follows:

(a) publishing legal notice ~~2~~ two times within ~~2~~ two weeks in a newspaper of general circulation in Butte, Missoula, Helena, Great Falls, Miles City, Kalispell, and Billings, and in a newspaper of general circulation ~~published~~ within 50 miles of the site of the proposed facility and any alternative site;

(b) remains the same.

(c) at least 30 days prior to the date of hearing, mailing to any person or group upon written request, the environmental quality council; the state departments of public service regulation~~;~~, fish, wildlife and parks, ~~state lands~~ natural resources and conservation, commerce, transportation, and revenue; and, in the case of an application for an MPDES permit, those listed in ARM 17.30.1372(5).

(3) The notice of public hearing shall contain the following:

(a) through (e) remain the same.

(f) the name and address of the presiding officer and the fact that written comments should be submitted to ~~him~~ that person;

(g) the name, address and phone number of the person from whom information concerning each relevant permit may be obtained; and, if an MPDES permit is applied for, a draft permit, a fact sheet as required by ARM 17.30.1371, and copies of MPDES forms and related documents must also be included~~.~~; and

(h) remains the same.

(4) The presiding officer shall accept information, comments and data from members of the public relevant to all aspects of the proposed facility which require a license or permit from the department at the ~~primary and alternative sites~~ proposed site and proposed and alternative locations for a linear facility orally or in writing at the hearing and in writing prior to the hearing. The hearing is not subject to the contested case procedure of the Montana Administrative

Procedure Act, and no cross-examination will be allowed. The presiding officer has the discretion to limit repetitive testimony and prescribe rules to ensure orderly submission of statements.

(5) remains the same.

(6) The department shall complete the procedures required in this rule so that all permits are issued by the applicable deadline established in 75-20-216 or 75-20-231, MCA.

AUTH: 75-2-111, 75-5-201, ~~75-20-216(3)~~ 75-20-105, MCA
IMP: 75-20-216(3), 75-20-231 MCA

REASON: 17.4.502 is proposed for amendment to remove the seven-month requirement for issuance of draft permits for air or water quality. Under MFSA the Department has one year to issue air and water quality permits and parallel language is proposed to be added to the rule. These changes would give the Department maximum flexibility in meeting its responsibility to complete the air and water quality permitting process within one year for facilities with potentially significant impacts or within 6 months for those facilities without significant impacts.

17.4.502(1)(a) is proposed for amendment because under 75-20-301, MCA, the Department may only consider the proposed location for a generation or conversion facility, but may consider alternative locations for linear facilities such as pipelines and electric transmission lines.

17.4.502(2)(a). The term "published" is proposed for deletion because it is possible that in some parts of the state a project may be more than 50 miles from the location of where a newspaper is published.

17.4.502(2)(c) is proposed for amendment to correct the name of the agency responsible for managing state school trust lands.

17.4.502(3)(f) is proposed for gender neutrality.

17.4.502(4) is proposed for amendment for the same reason described for the amendment to 17.4.502(1)(a).

Other changes are not substantive and are made to conform to grammar and style preferred by the Secretary of State.

17.20.301 DEFINITIONS Unless the context requires and clearly states otherwise, in these rules:

(1) through (4) remain the same.

(5) "Application" means an application to the department for a certificate of environmental compatibility ~~and public need~~ under 75-20-211, MCA.

(6) and (7) remain the same.

(8) "Associated powerline" means an associated facility consisting of an electrical distribution or transmission line that:

(a) is not a facility defined in 75-20-104(8)(c), MCA; and

(b) is used in delivery of electrical energy to or from a generation or conversion facility.

~~(8)~~(9) "Area of concern" means a geographic area or location specified in ARM ~~17.20.1405,~~ 17.20.1430~~,~~ and 17.20.1431, where construction or operation of a facility will likely damage the significant environmental values peculiar to the area or where environmental constraints may pose siting or construction problems, but where formal public recognition or designation has not been granted.

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

~~(10)~~ (11) "Baseline study" means a detailed analysis of ~~alternative sites~~ a proposed site for a generation or conversion facility and impact zones or alternative routes and impact zones for a linear facility for purposes of impact assessment and comparison and selection of a ~~preferred site or~~ preferred route.

(11) and (12) remain the same, but are renumbered (12) and (13).

~~(13) "Candidate siting area" means a geographic area selected pursuant to ARM 17.20.1412 that is located within an economically feasible siting area and is suitable for locating an energy generation or conversion facility.~~

(14) through (15) remain the same.

(16) "Certificate holder" means an applicant that has been granted a certificate or ~~an approved transfer by the board~~ who has received a certificate by transfer and has agreed to be bound by the terms, conditions, and modifications contained in the certificate.

~~(17) "Competitive utility" means a utility that has neither a legally protected service area nor a utility mandate to serve all demands for the energy form to be produced by a proposed facility.~~

(18) through (18)(b) remain the same, but are renumbered (17) through (17)(b).

~~(19) "Curtailable load" means an energy load that may be interrupted by a utility under contractual arrangement with a customer.~~

(20) through (22) remain the same, but are renumbered (18) through (20).

~~(23) "Direct unit costs" means the annual costs of operating a facility including amortized capital costs, taxes, operating, maintenance, administrative, fuel and other variable costs of production, divided by the annual output of the facility. Direct unit costs are not adjusted for assistance.~~

~~(24) "Economically feasible siting area" means a geographic area where a facility could be located with a resulting levelized delivered cost of energy that is no more than 30% higher than the lowest levelized delivered cost location for the facility.~~

~~(25) "End-use" means the ultimate use of energy, such as space heating, water heating, electric motors, and process heat.~~

(26) remains the same, but is renumbered (21).

~~(27) "Energy demand" means the demand by customers for kilowatt hours of electricity, thousand cubic feet of gas or other quantities of energy, in a specific time period.~~

(28) and (29) remain the same, but are renumbered (22) and (23).

~~(30)~~ (24) "Exclusion area" means a geographic area specified in ARM ~~17.20.1403 and~~ 17.20.1428 legally designated for its environmental values and having legally defined boundaries wherein facility construction or operation is prohibited, excepting those portions of the area where permission to site a facility has been obtained from the legislative or administrative unit of government with direct authority over the area.

~~(31)~~ (25) "Facility" is defined in 75-20-104~~(10)~~, MCA.

(32) through (34) remain the same, but are renumbered (26) through (28).

~~(35)~~ (29) "Inventory" means the collection and mapping of environmental information within candidate siting areas or study corridors for the purpose of selecting ~~alternative sites or~~ alternative routes.

(36) remains the same, but is renumbered (30).

~~(37) "Levelized unit cost" means the levelized cost divided by the annual output of the project.~~

(38) and (39) remain the same, but are renumbered (31) and (32).

~~(40) "Long-range plan" means a person's plan for the construction and operation of facilities in the ensuing 10 years, submitted to the department under 75-20-501, MCA.~~

(41) through (44) remain the same, but are renumbered (33) through (36).

~~(45) "Nonutility facility" means a facility whose output, except for incidental sales, will be used to produce goods or services other than energy prior to first sale.~~

~~(46) "Nonutility" means an applicant for a nonutility facility.~~

(47) and (48) remain the same, but are renumbered (37) and (38).

~~(49) "Peak demand" means the maximum 30 minute energy demand by customers for kilowatts of electrical power, or thousand cubic feet per hour of gas, or other rates of delivery of energy.~~

(50) remains the same, but is renumbered (39).

~~(51)~~ (40) "Reconnaissance" means a preliminary assessment of the study area based on published or readily available data used to select ~~candidate siting areas or~~ study corridors.

(52) through (53)(c) remain the same, but are renumbered (41) through (42)(c).

~~(54) "Sector of demand" means classes of customers served by a service area utility. Before January 1, 1988, the classes of customers are defined as the categories reported by a regulated utility to the state public service commission, the federal energy regulatory commission, or the rural electrification administration. After January 1, 1988, the classes of customers are residential, commercial, industrial,~~

~~and agricultural; the latter 3 sectors are defined by the US office of management and budget standard industrial classification codes. The commercial sector consists of groups 50 through 97; the industrial sector consists of groups 10 through 49; and the agricultural sector consists of groups 1 through 9. Rural residences not metered separately from agricultural loads may be included either in the residential or agricultural sector depending on the predominant usage of the energy form in question.~~

~~(55)~~ (43) "Sensitive area" means a geographic area or location specified in ARM ~~17.20.1404,~~ 17.20.1429~~,~~ and 17.20.1431, where construction or operation of a facility will likely damage the significant environmental values peculiar to the area or where environmental constraints may pose siting or construction problems and where these values or constraints have received formal public recognition or designation or are in the process of being designated at the time the application is filed.

(56) and (57) remain the same, but are renumbered (44) and (45).

~~(58)~~ (46) "Site" means the parcel of land the applicant would acquire to construct the buildings, components, and nonlinear associated facilities comprising an energy generation or conversion facility.

(a) ~~"Alternative site" means 1 of the alternate site locations potentially suitable for the construction of an energy generation or conversion facility that the applicant has selected for baseline study.~~

~~(b) "Preferred site" means the applicant's preferred location for an energy generation or conversion facility and the site for which a certificate is sought.~~ "Proposed site" means the applicant's proposed location for an energy generation or conversion facility and the site for which a certificate is sought.

~~(59)~~ (47) "Siting study" means an analysis conducted by the applicant to identify a ~~preferred site or~~ preferred route.

~~(60)~~ (48) "Study area" means the geographical region containing the locations where a proposed linear facility reasonably could be sited, considering the applicant's service area, the intended market area(s) of the product the facility ~~produces or~~ transports, and/or the electrical system problems that would be solved by the facility.

(61) remains the same, but is renumbered (49).

AUTH: 75-20-105, MCA
IMP: 75-20-104, ~~75-20-105(2),~~ MCA

REASON: 17.20.301(5). The Legislature changed in Chapter 329, Laws of 1997, the name of the certificate issued pursuant to the Major Facility Siting Act (MFSA) by deleting the words "and public need." This amendment would conform the rule to the amended statute.

17.20.301(8). This amendment would define a new term used in subchapter 15 of this chapter.

17.20.301(9). This amendment would remove a cross-reference to a rule that is proposed for repeal.

17.20.301(11). This amendment is proposed because the Legislature, in Chapter 312, Laws of 1987, provided that baseline study is no longer required for alternative sites for generation or conversion facilities.

17.20.301(13). This definition is proposed to be deleted because the term "candidate siting area" is used in the selection of alternative sites for generating facilities. The Legislature eliminated the alternative site requirement for generating facilities in Chapter 312, Laws of 1987.

17.20.301(16). This amendment is proposed because the Legislature in Chapter 583, Laws of 1997, amended 75-20-203, MCA, to allow transfers of certificates to occur without department or board approval.

17.20.301(17). The definition for the term "competitive utility" is proposed for deletion because the term is used in connection with the determination of need for generation and conversion facilities. Since 1997 there has been no requirement for a determination of need for these facilities in MFSA and the definition is obsolete.

17.20.301(19). The term "curtailable load" was formerly used to gather information pertaining to need for a generation or conversion facility. In 1997 the Legislature changed the decision standards (75-20-301, MCA) for generation and conversion facilities and eliminated the requirement for a determination of need for these facilities. Consequently, the term is no longer necessary and is proposed for deletion.

17.20.301(23). The definition of "direct unit costs" is proposed for deletion because the term is used in portions of subchapter 12 which are proposed for repeal.

17.20.301(24). This provision is proposed for deletion because the term "economically feasible siting area" is used in the process of selecting alternative sites for generating facilities. The Legislature eliminated the alternative site requirement for generating facilities in Chapter 312, Laws of 1987.

17.20.301(25). The term "end use" is used to gather information pertaining to need for a generation or conversion facility. In 1997 the Legislature changed the decision standards (75-20-301, MCA,) for generation and conversion facilities and eliminated the requirement for a determination of need for these facilities. Consequently, the term is obsolete and is proposed for deletion.

17.20.301(27). The term "energy demand" is used to gather information pertaining to need for a generation or conversion facility. In 1997 the Legislature changed the decision standards (75-20-301, MCA) for generation and conversion facilities and eliminated the requirement for a determination of need for these facilities. Consequently, the term is obsolete and is proposed for deletion.

17.20.301(30). The cross-reference is proposed to be deleted because 17.20.1403 is proposed for repeal.

17.20.301(31) is proposed to be amended because the term is defined in a different subsection of 75-20-104, MCA. The subsection reference has been deleted so that the rule will not need to be amended if future amendments to the statute change the subsection number.

17.20.301(35). This proposed amendment would remove the alternative site inventory requirement because MFSA no longer requires consideration of alternative sites for generation or conversion facilities.

17.20.301(37). This definition is proposed for deletion because the term "levelised unit cost" is used only in the rules that are proposed for repeal.

17.20.301(40). This definition is proposed for deletion because the term "long-range plan" is obsolete. In 1993, the Legislature repealed the requirement for applicants to submit long range plans.

17.20.301(45). The definition for the term "nonutility facility" is proposed for deletion because the term is used in connection with the determination of need for generation and conversion facilities. Since 1997, there has been no requirement for a determination of need for these facilities in MFSA and the definition is obsolete.

17.20.301(46). The definition for the term "nonutility" is proposed for deletion because the term is used in connection with the determination of need for generation and conversion facilities. Since 1997, there has been no requirement for a determination of need for these facilities in MFSA and the definition is obsolete.

17.20.301(49). The definition for the term "peak demand" is proposed for deletion because the term is used in connection with the determination of need for generation and conversion facilities. Since 1997, there has been no requirement for a determination of need for these facilities in MFSA and the definition is obsolete.

17.20.301(51). The term "candidate siting areas" is used in the selection of alternative sites for generating facilities. The Legislature eliminated the alternative site requirement for generating facilities in Chapter 312, Laws of 1987.

17.20.301(54). This term appears only in rules that are proposed for repeal.

17.20.301(55). The reference to 17.20.1404 would be deleted because that rule is proposed for repeal.

17.20.301(58). The term "alternative site" is proposed for deletion because the Legislature, In Chapter 312, Laws of 1987, eliminated the alternative site requirements for energy generation and conversion facilities. The term "proposed site" is substituted to implement the current law under which an applicant is required only to propose one site in the application.

17.20.301(59). The term "preferred site" is proposed for deletion because the Legislature, in Chapter 312, Laws of

1987, eliminated the alternative siting requirement for all non-linear facilities.

17.20.301(60). The additional language would implement the 1997 amendment to MFSA that limited the alternative siting requirement to linear facilities. The word "produces" is proposed for deletion because linear facilities do not "produce" a product.

17.20.302 PUBLIC RECORD--CONFIDENTIALITY (1) Any records, materials, or other information furnished pursuant to the Act or these rules are a matter of public record and are open to public inspection, unless they are entitled to protection under the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA. ~~Any records, materials, or information unique to an applicant which would, if disclosed, reveal methods or processes entitled to protection as trade secrets will be maintained as confidential if so required by a court of competent jurisdiction. The burden for obtaining such relief is upon the applicant.~~

(2) A person furnishing documents that the person believes are entitled to protection as trade secrets shall notify the department before or at the time the person furnishes the documents to the department. If the department determines that the information is protected, it shall maintain the documents as confidential. If the department determines that the documents are not entitled to protection, it shall notify the person and maintain the documents as confidential for a period reasonably necessary for the person to obtain a court order requiring the department to maintain confidentiality.

AUTH: 75-20-105, MCA
IMP: ~~75-20-105~~ 75-20-211, MCA, and Mont. Const. 1972, Art. II, Sec. 9

REASON: These amendments are necessary to allow the Department to make a determination as to whether documents contain trade secrets and to guarantee that a person has adequate time to obtain a protective order. The current rule requires a court order in all instances and may prevent the Department from maintaining confidentiality while a court order is being sought. The current rule, therefore, exposes the Department to potential liability for damages and attorney fees under the Uniform Trade Secrets Act.

17.20.801 REQUIREMENTS OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW (1) An application must contain the information required by the department of environmental quality and the board of environmental review to determine compliance with applicable standards, permit requirements, and implementation plans under their jurisdiction for any proposed facility and for the primary and reasonable alternate locations for ~~the~~ a proposed linear facility pursuant to 75-20-216(3), MCA.

AUTH: 75-20-105, MCA
IMP: 75-20-105, 75-20-211, MCA

REASON: After the amendments to MFSA made in Chapter 312, Laws of 1987, only the applicant's proposed location is considered for a generation or conversion facility, but the proposed and reasonable alternatives are considered for a linear facility.

17.20.802 APPLICATION, NUMBER OF COPIES (1) The applicant shall submit 20 copies of the application at the time of filing to the department, PO Box 200901, Helena, MT 59620-0901. The applicant may submit fewer copies, especially of maps, map overlays, exhibits, appendices, or attachments as defined in ARM 17.20.803(3)~~(h) and~~ (i) and (j), upon prior written approval from the department. For the contact prints providing photographic coverage, required by ARM ~~17.20.816(5)~~ 17.20.1418(5) and 17.20.1440(4), ~~1~~ one copy is sufficient. The applicant shall promptly furnish ~~1~~ one additional copy if requested by the department.

AUTH: 75-20-105, MCA
IMP: ~~75-20-105~~ 75-20-211, MCA

REASON: The cross-reference to 17.20.816(5) is incorrect. The correct reference should be 17.20.1418(5). Other changes are not substantive and are made to conform to grammar and style preferred by the Secretary of State.

17.20.803 APPLICATION, FORMAT (1) and (2) remain the same.

(3) An application shall be organized according to the following general categories:

(a) through (c) remain the same.

(d) explanation of the purpose and benefits of the proposed facility;

~~(d)~~ (e) explanation of the need for ~~the~~ a linear facility;

(e) remains the same, but is renumbered (f).

~~(f)~~ (g) alternative siting study for linear facilities;

(g) through (i) remain the same, but are renumbered (h) through (j).

AUTH: 75-20-105, MCA
IMP: ~~75-20-105~~ 75-20-211, MCA

REASON: Section (2)(d) is added to satisfy requirements of the Montana Environmental Policy Act (MEPA) that all environmental documents contain a description of the purpose and benefits of a proposed project. Because of amendments to MFSA made in Chapter 329, Laws of 1997, the need determination now applies only to linear facilities after legislative changes in 1997, and a conforming amendment has been made to (2)(e). The amendment to section (2)(g) is necessary because

the legislature, in Chapter 312, Laws of 1987, limited the alternative siting study requirement to applications for linear facilities.

17.20.805 SUPPLEMENTAL MATERIAL (1) The applicant shall submit supplemental material to the department within ~~30~~ 15 days after it becomes available following filing of an application. The applicant shall submit supplemental material in the form of substitute pages or insertions to the application as originally filed. Supplemental material includes information to update or finalize information submitted with the original application and the following:

(a) through (2) remain the same.

AUTH: 75-20-105, MCA
IMP: ~~75-20-105,~~ 75-20-213, MCA

REASON: The time for submittal of supplemental information from the applicant to the Department would be changed from 30 days to 15 days because the total time allowed the Department for preparing the report was reduced in 1997 from 22 months to 12 months in 75-20-216(3), MCA. Waiting 30 days for supplemental information would jeopardize schedules for publishing the report.

17.20.807 AMENDMENT TO APPLICATION--NEW APPLICATION

(1) and (1)(a) remain the same.

(b) significant changes in the basis of the need for ~~the~~ a linear facility; or

(c) significant changes in the economics of alternatives to the proposed facility as required by ARM 17.20.1301, ~~through~~ 17.20.1302, 17.20.1304, 17.20.1305, ~~17.20.1309 and 17.20.1310~~ and 17.20.1311.

(2) through (5) remain the same.

AUTH: 75-20-105, MCA
IMP: ~~75-20-105,~~ 75-20-211, 75-20-213, 75-20-215, 75-20-216, MCA

REASON: The need determination applies only to linear facilities after legislative changes in 1997. The cross references also would be corrected to reflect proposed changes to subchapter 13.

17.20.811 ALL FACILITIES, ESTIMATED COST OF FACILITY

(1) An application for a facility defined in 75-20-104~~(10)~~, MCA, must contain estimates and a description of total costs and expenses attributable to the engineering, construction, and startup of the proposed facility and associated facilities up to the time of commercial operation. Cost estimates may be based on preliminary engineering or if available, standardized engineering estimates.

(2) through (7) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, 75-20-213, 75-20-215, 75-20-301, MCA

REASON: The definition of "facility" is now found in 75-20-104(8), MCA. The reference to the code subsection would be eliminated so that the rule would not need amendment if, in the future, 75-20-104, MCA, is further amended.

17.20.817 ~~ALL~~ LINEAR FACILITIES, PRICING POLICY (1) An application for a linear facility must contain a discussion of how the product or transportation services provided by the facility will be priced or how the costs of the facility will be recovered. Distinction should be made between pricing according to market value, and the use of rolled-in pricing, average cost pricing, or any other cost-based pricing method. This rule does not apply to transmission lines that recover costs through overall energy charges or similar methods.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: ARM 17.20.817 is being changed to apply only to linear facilities because information on the pricing policy is no longer necessary to make the determinations in 75-20-301(3), MCA, for generation facilities.

17.20.818 ~~ALL~~ LINEAR FACILITIES, EVALUATION OF ECONOMIC COSTS AND BENEFITS (1) To facilitate a comparison of the project and alternatives for the ~~board's~~ department's finding under 75-20-301~~(2)(c)~~, MCA, an application must include information on the internal and external costs and benefits of ~~the~~ a proposed linear facility.

~~(1)~~ (2) For internal costs the information provided under ARM 17.20.811 ~~and 17.20.812~~ or 17.20.815 is sufficient.

~~(2)~~ (3) For external costs the information provided under ARM ~~17.20.1419 and~~ 17.20.1444 or 17.20.1445 is sufficient.

(3) remains the same, but is renumbered (4).

AUTH: 75-20-105, MCA
IMP: 75-20-211, 75-20-301, MCA

REASON: This rule is proposed for amendment to apply only to linear facilities because the minimum adverse impact standard in 75-20-301, MCA, now applies only to linear facilities. The term "board" would be changed to "department" because the Department is now charged with making the application decision and the Board only hears appeals. The reference to the code subsection would be eliminated so that the rule would not need amendment if, in the future, 75-20-301, MCA, is amended and subsections are renumbered. References to 17.20.812 and 17.20.1419 are proposed to be removed because both rules are proposed for repeal. Other changes are not substantive and are made to conform to grammar and style preferred by the Secretary of State.

17.20.901 GENERATION AND CONVERSION FACILITIES, ~~EXPLANATION OF NEED~~ EXPLANATION OF PURPOSE AND BENEFITS OF THE PROPOSED FACILITY (1) An application must contain an explanation of the purpose of the proposed facility and the benefits that it will provide. This includes a discussion of the likely markets it will serve and any other purposes it will serve and benefits it will provide. ~~from a service area utility must explain the basis of need for the proposed facility by documenting the need for the energy to be produced by the facility, including an explanation of the existing resources available to the applicant, future resources for which major permits and regulatory approvals have been granted, the expected growth in energy demands in the applicant's service area, and the role of the proposed facility and other planned resources in serving the load growth. An application must include a discussion of the degree of uncertainty in the timing of the need for the proposed facility, the degree of uncertainty in the likely markets for sale of the output of the proposed facility in the event the facility is placed in service before its output can be used in the applicant's service area, and contingency plans if need in the applicant's service area or markets for outside sales do not develop as expected. An applicant whose special circumstances make part or all of these requirements inappropriate should contact the department to determine special application requirements~~.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: The changes to 17.20.901 are necessary because a finding of need is no longer necessary for a generation or conversion facility to be certified. An explanation of the applicant's purpose and benefits is necessary to meet the requirements of the MEPA.

17.20.907 ~~ALL~~ TRANSMISSION FACILITIES, REGIONAL RELIABILITY CRITERIA (1) An application for a transmission facility must contain a discussion of the ~~applicant's system~~ reliability of the applicant's system and regional transmission system, including the following:

~~(1)~~ (a) a description of the existing and desired levels of ~~generation,~~ transmission system ~~and distribution~~ reliability and how the proposed facility affects the level of reliability;

~~(2)~~ (b) as relevant, an explanation of the rationale for the selection of the applicant's desired level of reliability;

~~(3)~~ (c) the planning assumptions and rules used to maintain the desired level of ~~generation and~~ transmission reliability;

~~(4)~~ (d) as relevant, the expected frequency of interruption of service to customers on the applicant's transmission system under current reliability criteria, and

the extent to which that frequency of interruption is associated with outages of generation, transmission, and distribution facilities; and

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

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: This rule is designed to provide information to support the need for the facility by showing how any proposed generating or transmission facility would support the applicant's reliability criteria. Since there is no longer a demonstration of need for generating facilities, the requirements pertaining to generation and conversion facilities would be removed from this rule. If a regional transmission organization is formed to operate the regional high voltage transmission grid, applications to build new transmission lines may come from parties other than transmission owners. Transmission reliability levels will then not be under the control of the applicant and system outage frequencies on the local or regional transmission system may not be relevant to the applicant. Other changes are not substantive and are made to conform to grammar and style preferred by the Secretary of State.

17.20.929 ~~ALL~~ LINEAR FACILITIES, ~~POOLING, INTERCONNECTION, EXCHANGE, PURCHASE, AND SALE~~ AGREEMENTS

(1) An application for a linear facility ~~from an electric utility must contain the information listed in ARM 17.20.504 and 17.20.505 that is relevant to the proposed facility.~~ must include either a copy of any and all interconnection agreements involving the proposed facility, or the following information for each such agreement:

(a) a brief description of the obligations of and the benefits to the facility under the agreement;

(b) a list of all parties to the agreement;

(c) the time period during which the agreement is in effect;

(d) a summary of the terms of the agreement; and

(e) the financial agreements.

(2) An application for a linear facility must include a description of all current and planned negotiations with respect to interconnection of the facility and transmission of energy. The description must include a list of the parties to any negotiations and a general discussion of the history and current status of the negotiations.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: This material (formerly provided in long range plans, which are no longer required) is still needed for applications to help identify effects on local and regional transmission systems and would be incorporated into 17.20.929.

The required information for generation and conversion facilities is proposed to be moved to subchapter 15. The information needed for linear facilities would remain in 17.20.929.

17.20.1301 ~~SERVICE AREA UTILITIES,~~ GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVES (1) An application must contain an evaluation of the nature and economics of alternatives to the proposed facility, including ~~alternative energy resources, energy conservation,~~ alternative energy technologies that could be implemented at the proposed site, ~~nonconstruction alternatives, alternative sizes and timing of facilities,~~ the no action alternative, ~~and~~ alternative technological components and pollution control systems for the proposed facility. An application must contain a comparison of alternatives leading to selection of the proposed facility as the preferred alternative, and an explanation of the reasons for selection of the proposed facility.

~~(2) An application must contain an evaluation of each alternative energy resource, energy conservation, or alternative energy technology that can produce or save at least 1 megawatt or 1% of the output of the proposed facility, whichever is greater. The evaluation must describe each alternative energy resource or energy conservation measure, the location and quantity of the resource available, and the constraints to its availability. Predictable daily and seasonal variations in the availability of an alternative energy resource or energy conservation must also be described. Dispersed resources such as conservation shall be treated collectively as a single alternative, not analyzed one site at a time.~~

~~(a) Alternative energy resources include, but are not limited to, coal, natural gas, liquid hydrocarbons, nuclear, solar, wind, geothermal resources, biomass, and falling water.~~

~~(b) Energy conservation includes any measures that reduce the amount of energy required to accomplish a given quantity of work through increases in efficiency of energy use, production or distribution.~~

~~(c)~~ Alternative energy technologies include, but are not limited to, alternative combustion technologies, alternative coal conversion technologies, alternative boiler designs, cogeneration and alternative uses of waste heat, alternative wind, hydropower, and geothermal generation technologies, and the direct application of energy resources.

~~(3) An application must contain an evaluation of non-construction alternatives, including purchase of a share in another planned or existing facility, long-term purchase of energy or capacity from other utilities or suppliers, and increased use of contractually curtailable customer loads.~~

~~(a) For peaking facilities, nonconstruction alternatives include load management and peak load pricing, and increased contractual interruptibility and curtailability of customer loads.~~

~~(4) An application must contain an evaluation of alternative size facilities and alternative timing and frequency of construction. The evaluation must include the alternative timing of appropriately sized plants using alternative energy resources and technologies as well as alternative sizing and timing of energy generation or conversion plants of the same type as the proposed facility, including those below the size thresholds in 75-20-104(10), MCA. The evaluation must also include alternative timing of any other energy generation or conversion units planned by the applicant, including those identified in the long-range plan filed with the department under ARM 17.20.502 or other planning documents of the applicant.~~

~~(5)~~ (2) An application must contain an evaluation of the no action alternative, wherein no action would be taken to meet the ~~need~~ purpose or provide the ~~services~~ benefits the proposed facility is designed to meet or provide.

~~(6)~~ (3) An application must contain an evaluation of alternative technological components and subsystems that could be employed by the proposed facility that could substantially reduce the cost or environmental impacts of the proposed facility, including, but not limited to, air and water pollution control systems, cooling systems, and transmission and distribution systems and those required by ARM 17.20.1418~~(8)~~(10) and ~~17.20.1419(8) and (9)~~ department Circular MFSA-1, Sections 3.11 and 3.12.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: The catchphrase for 17.20.1301 would be amended because there is no longer any distinction between service area utilities, competitive utilities, and non-utilities for generation or conversion utilities. 17.20.1301(1) would be amended to better summarize the material in the remainder of this rule. With the exception of 17.20.1301(2)(c), 17.20.1301(2), (3) and (4) are proposed for deletion because this information is no longer required to make the decision in 75-20-301, MCA. In Chapter 329, Laws of 1997, the Legislature amended 75-30-301, MCA, to provide that, for energy generation or conversion, the Department is to consider only cost and environmental benefits of mitigation to significant environmental impacts of the applicant's proposed facility. The internal reference is proposed for amendment to reflect the proposed amendment to 17.20.1418.

17.20.1302 ~~SERVICE AREA UTILITIES,~~ GENERATION AND CONVERSION FACILITIES, CRITERIA FOR EVALUATION OF ALTERNATIVES TO THE PROPOSED FACILITY (1) An application must contain an evaluation of relevant alternatives listed in ARM 17.20.1301, leading to a ranking of alternatives and selection of the proposed facility. The evaluation and selection may be made by any method preferred by the applicant.

~~(1)~~ (2) An application must include a detailed description of the methods and criteria used by the applicant to select the proposed facility given the capacity, availability, and types of alternatives, and to determine the proposed size and timing of construction, in order to achieve maximum economies of scale and the applicant's desired level of reliability at the lowest economic cost. Documentation for process tradeoff studies performed by the applicant must be provided. Published tradeoff studies may be cited by reference. A description of the methods used to select the proposed designs for major process areas must be included.

~~(2)~~ (3) In addition to the applicant's criteria for comparison, all appropriate alternatives which have no insurmountable environmental, technical or other problems serious enough to warrant elimination from further consideration, must be ranked by the levelized delivered cost of energy, including known mitigation costs. Alternatives whose levelized delivered cost of energy is not more than 35% higher than the cost of energy from the proposed facility, or which have significant environmental~~, planning or operational~~ advantages over the proposed facility, must be compared on the basis of performance, system impact, and environmental impact as follows:

(a) performance criteria include:

(i) the first year and levelized delivered cost of energy, including known mitigation costs, incremental transmission costs and the effect of line losses; and

(ii) the estimated on-line life of the alternative and the projected capacity factor during the on-line life of the alternative~~;~~.

~~(iii) impact on reserve requirements;~~

~~(iv) availability;~~

~~(v) planning flexibility and resource commitment;~~

~~(vi) operating flexibility; and~~

~~(vii) amount of demand that can be provided for by the alternative;~~

~~(viii) constraints to implementation;~~

~~(b) system impact criteria include:~~

~~(i) incremental system cost;~~

~~(ii) impact on system reliability;~~

~~(iii) impact on system reserve requirements; and~~

~~(iv) potential contribution of the alternative to the firming of existing secondary resources; and~~

~~(v) impact on need for future expansion of the transmission and distribution system;~~

(c) through (4) remain the same, but are renumbered (b) through (5).

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: New (2) would be amended to enable the Department to understand the applicant's reasons for selecting technologies used in a generation or conversion facility. New

(3) would be amended to reflect changes in 17.20.1301(4). In Chapter 329, Laws of 1997, the Legislature amended 75-20-301, MCA, to provide that, for energy generation and conversion facilities, the Department is to consider only cost and environmental benefits of mitigation of significant environmental impacts of the applicant's proposed facility. Therefore, the Board is proposing to amend this rule to require information on cost and environmental benefits for a narrowed range of alternatives. Other changes are not substantive and are made to conform to grammar and style preferred by the Secretary of State.

17.20.1311 PIPELINE FACILITIES, EVALUATION OF ALTERNATIVES (1) An application for a pipeline facility must contain an evaluation of alternatives, including, but not limited to, the use of alternative transportation modes, alternative starting points ~~if the point of origin is a plant~~ or ~~facility for which a site must be chosen, alternative~~ destination points, alternative diameter pipe, alternative flow rates, alternative rates of pumping or compressing, alternative size, number and location of pump or compressor stations, alternative pump or compressor fuels and fuel sources, alternative pipe wall thickness and alternative pipe material, and the no action alternative. Service area utilities shall also evaluate alternate methods of meeting the need for the energy being transported.

AUTH: 75-20-105, MCA
IMP: 75-20-211, 75-20-301, MCA

REASON: The change is necessary to reflect the notion that a pipeline may originate at a conversion facility or its destination may be a generation facility. The Department no longer considers alternative sites for generation or conversion facilities and cannot use an alternative location for a linear facility to move the location of a generation or conversion facility. See 75-20-301(5), MCA.

17.20.1418 ENERGY GENERATION AND CONVERSION FACILITIES, BASELINE STUDY, GENERAL REQUIREMENTS (1) An application must contain a baseline study of ~~at least 3 alternative~~ the proposed site~~s~~ and the proposed and any alternate locations of off-site associated facilities and their impact zones to gather baseline data describing the existing environment, to assess impacts associated with the proposed facility, and to identify mitigation strategies~~, and to select the preferred site~~ for potentially significant adverse impacts.

(2) The applicant shall depict ~~each alternative~~ the proposed site and its boundaries, and the proposed and any alternate locations of all on-site and off-site associated facilities, as appropriate, using symbols or lines approximately one-half millimeter or less in width drawn on a 1:24,000 topographic base map. This base map shall indicate any upgrade, replacement or removal of existing equipment or

installation(s) that would be necessary for construction or operation of the proposed facility and associated facilities. The applicant shall provide one mylar copy of this base map to the department and an electronic equivalent acceptable to the department. Each electronic submittal shall be accompanied by metadata describing the submittal. ~~For any areas where 1:24,000 topographic base maps are not available, USGS maps preliminary to the published 7.5 minute quadrangle maps shall be used, or where these are not available, USGS advance or final 7.5 minute orthophoto quads shall be used. Where none of these are available, USGS 15 minute topographic maps or the best available published maps with a scale of 1:125,000 or 100,000, enlarged to 1:24,000 if necessary, shall be used.~~

(3) An application must contain ~~1~~ one of 1:4800 topographic maps and an electronic equivalent acceptable to the department showing the locations, as applicable, of the generators, emission control devices, condensers, shift conversion facilities, reactors, stacks, catalyst production and regeneration facilities, cooling towers, water storage ponds, waste disposal ponds, roads, parking areas, railroad spurs, substations, pumping stations, on-site pipelines, ~~coal~~ storage facilities, any other structures or buildings, nonlinear associated facilities, and any existing structures for ~~each alternative~~ the proposed site, noting structures that would be relocated or destroyed.

(4) An application must contain an overlay or overlays and an electronic equivalent(s) acceptable to the department, as appropriate, to the base map required by (2) of this rule of the baseline data required by ~~ARM 17.20.1419~~ department Circular MFSA-1 that can be mapped~~, the exclusion areas listed in 17.20.1403, the sensitive areas listed in 17.20.1404, and the areas of concern listed in 17.20.1405, that~~ and are within the impact zones associated with ~~each alternative~~ the proposed site and the proposed and any alternate locations of associated facilities. The applicant shall organize the information according to the ~~categories listed in ARM 17.20.1420(3)(c) through (e) and (h) through (m)~~ requirements of department Circular MFSA-1 and shall present the information on the minimum number of overlays to the base map that will clearly portray the information. The applicant shall provide ~~1~~ one mylar copy of each overlay to the department. All overlays shall clearly show section lines or corners and township and range locations.

(5) An application must contain ~~1~~ one set of ~~black and white~~ color contact prints at a scale of approximately 1:48,000 or 1:24,000 that provide complete aerial stereo coverage of the ~~alternative~~ proposed site~~s~~, the geographic area within a ~~5~~ five mile radius of ~~each alternative~~ the proposed site, and within a ½ mile buffer of the proposed and any alternate locations of off-site associated facilities. These photos shall be taken during a season of full foliage no more than ~~3~~ three years prior to filing the application unless otherwise approved by the department. An application must contain advance or final USGS 7.5-minute orthophoto quads,

where available, for the impact zones or portions of impact zones that are not covered by the aerial photos. However, this requirement does not apply to the impact zones associated with assessment of social and economic impacts required ~~pursuant to ARM 17.20.1419(3)(B), (4) and (5)~~ by section 3.6 of department Circular MFSA-1.

(6) For ~~each alternative~~ the proposed site, ~~or for the proposed site for any facility for which a waiver has been obtained pursuant to 75-20-304(3), MCA,~~ the applicant must certify in the application that purchase options or access for purposes of conducting the studies required by these rules have been obtained. For off-site associated facilities, the applicant shall describe the location(s) where options or access for the purpose of conducting these studies have been denied and the reason(s) for denial.

(7) An application must contain a summary of the results of consultation with appropriate government agencies to identify their concerns about the proposed facility's possible effects on the environment, and the way the applicant considered these concerns in identifying mitigating measures to address potentially significant impacts of the facility.

(8) An application may contain any valid and useful existing studies, reports, or data prepared on the energy generation or conversion facility and may be submitted by the applicant towards fulfilling the requirements of department Circular MFSA-1 but shall be subject to supplementation and shall be used by the department only to the extent it considers them applicable.

~~(7)~~ (9) An application must contain, for ~~each alternative~~ the proposed site and the proposed and any alternate locations of off-site associated facilities, information required by the department ~~and~~ or board necessary to make or issue any decision, opinion, order, certification, or permit required under laws administered by the department, other than those contained in the Act ~~to determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction~~ pursuant to 75-20-216(3), MCA.

~~(8)~~ (10) An application must identify and discuss available alternative levels and types of mitigation to reduce or eliminate potentially significant adverse impacts of the facility at ~~each alternative~~ the proposed site and the proposed and any alternate locations of off-site associated facilities, including, but not limited to:

(a) alternative pollution control and waste disposal strategies, equipment and/or facilities;

(b) through (d) remain the same.

(11) An application must contain the estimated cost of implementing each level and type of mitigating measure to reduce or eliminate potentially significant adverse impacts that would occur during construction, operation, or decommissioning of the proposed facility and associated facilities. Estimated costs of mitigation measures for potentially significant adverse impacts also must be included

for associated facilities whose operations would be modified to serve the proposed facility.

(12) An application must contain a summary of the baseline study and impact assessment for the proposed site and for each off-site associated facility which includes the following:

(a) a summary of potentially significant adverse impacts of the proposed site and off-site associated facilities, and the impact zones around them as determined by the baseline study conducted pursuant to department Circular MFSA-1;

(b) description of mitigating measures, if any, proposed for potentially significant adverse impacts;

(c) an evaluation of any increased impact to other resources resulting from implementation of each mitigating measure;

(d) a summary of potentially significant adverse impacts at the proposed site and off-site associated facilities for which no mitigation has been identified;

(e) a summary of any unmitigated impacts of the proposed site and off-site associated facilities that may pose a threat of serious injury or damage to the environment, social and economic conditions of inhabitants of the affected area or the health, safety, or welfare of area inhabitants;

(f) a comparison of the estimated cost and the degree of mitigation achieved, for each alternative level and type of mitigation measure considered to address each potentially adverse significant impact; and

(g) an explanation of the applicant’s reasons for selecting the proposed mitigating measures and an explanation of the applicant's reasons for not selecting other mitigating measures.

(13) Information for (12)(a) through (g) above must be provided for the impact categories listed in department Circular MFSA-1.

(14) The board hereby adopts and incorporates by reference department Circular MFSA-1, which sets forth the baseline study requirements and impact assessment to be included in an application for a proposed energy generation and conversion facility and associated facilities. Copies may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: In 17.20.1418(1), the phrase "at least 3 alternatives" is proposed for deletion and the words "the proposed" are proposed for insertion to reflect legislative changes in MFSA that no longer require consideration of alternative sites for a proposed generation and conversion facility. The phrase "and the proposed and any alternate locations of off-site associated facilities" is proposed for insertion in order to consolidate the route and centerline approval process for linear associated facilities with the

approval process for a proposed generation or conversion facility. See also rationale for the proposed deletion of 17.20.1426(3). The phrase "for potentially significant adverse impacts" is proposed for insertion to require the applicant to identify potentially significant impacts and is necessary to initially identify the full range of possible significant impacts. The number of potentially significant impacts would be reduced through the application of mitigating measures. The intent is to have the applicant and the Department start the certification process by thinking broadly in identifying impacts. Initially identifying too narrow a range of impacts could result in unnecessary disputes over determinations of whether all reasonable, cost-effective mitigating measures have been applied late in the certification process.

In 17.20.1418(2), the words "each alternative" are proposed for deletion and the words "the proposed" are proposed for insertion. See rationale for 17.20.1418(1) above. The phrase "and its boundaries" is proposed for insertion to clarify that depiction of the proposed generation site must also indicate its boundaries when identifying potentially significant impacts. Specification of a site boundary is necessary to show the area which is proposed to be covered by a certificate and to clarify where the Department would have jurisdiction. The phrase "proposed and any alternate" is proposed for insertion to indicate that use of an alternate location for an associated facility is a potential mitigation measure for certain significant impacts. If an alternative location is proposed pursuant to (1) above, the Department can identify its location.

In 17.20.1418(2), the sentence, "This base map shall indicate any upgrade, replacement or removal of existing equipment or installation(s) that would be necessary for construction or operation of the proposed facility and associated facilities." is proposed for insertion in order to fully identify and assess potentially significant impacts. The phrase "and an electronic equivalent acceptable to the department" is proposed for insertion in order to speed preparation of maps and figures for inclusion in the Department's report. When the existing rules were written almost all drafting was still being done by hand. Most map preparation is now done on computers. The phrase "each electronic submittal shall be accompanied by metadata describing the submittal" is proposed for insertion to ensure that adequate documentation is provided for maps submitted in a digital format and included with an application. The language deletions are proposed because 1:24,000 topographic base maps are now available for all areas of the state.

In 17.20.1418(3), for the proposed insertion of the phrase "and an electronic equivalent acceptable to the department", see the rationale for (2) above. Deletion of the word "coal" as a modifier for storage facilities is proposed to broaden the applicability of this rule to address generation facilities other than only those using coal. For

example, diesel fuel or propane might be used as startup fuels for a natural gas fired plant. The impacts of storage of these startup fuels need to be addressed in any environmental document the Department prepares. For the proposed deletion of "each alternative" and insertion of "the proposed", see the rationale provided under (1) above.

In 17.20.1418(4), for the proposed insertion of the phrase "and an electronic equivalent acceptable to the department" see the rationale provided for (2) above. The citation "ARM 17.20.1419" is proposed for deletion and the phrase "department Circular MFSA-1" is proposed for insertion because the detailed information requirements of the baseline study and impact assessment in this rule are proposed for transfer to the circular. Cites of "the exclusion areas listed in 17.20.1403, the sensitive areas listed in 17.20.1404, and the areas of concern listed in 17.20.1405 that" and the phrase "categories listed in 17.20.1420(3)(c) through (e) and (h) through (m)" are proposed for deletion to reflect changes to MFSA that no longer require consideration of alternative sites for a proposed generation and conversion facility.

In 17.20.1418(5), the phrase "black and white" is proposed for deletion and the word "color" is proposed for insertion because more information can be interpreted from a set of color photos than can be derived from a set a black and white photos. The word "approximately" is proposed for insertion to clarify that submitted prints need not be exactly the specified scale because scale will vary somewhat with changes in ground elevation. For proposed deletion of the words "alternative" and "each alternative" and insertion of "proposed" and "the proposed" see the rationale provided under (1) above. Addition of the phrase "within a ½ mile buffer of" is proposed in order to provide the Department with sufficient information to complete its required study of associated facilities. One-half mile was selected in order to provide air photos showing vegetation types that might be used by nesting raptors. It is typical to use a ½ mile non-disturbance buffer around these nests until the young raptors have fledged. Lastly, the proposed deletion of "pursuant to ARM 17.20.1419(3)(b), (4) and (5)" and insertion of "by section 3.6 of department Circular MFSA-1" is necessary because the detailed information requirements of the baseline study and impact assessment in this section are proposed for transfer to the circular.

In 17.20.1418(6), new language is proposed to help ensure that the Department can identify where, along the proposed or any alternate locations for associated facilities, access has not been obtained. Denial of access could hinder completion of impact studies for off-site associated facilities. Deletion of "each alternative" and addition of "the proposed" reflects the Legislature’s deletion of the alternative site requirement for generation and conversion facilities. The language regarding waivers is proposed for deletion because 75-20-304(3), MCA, applies only to linear facilities.

In 17.20.1418(7) and (8), language is proposed to be transferred from 17.20.1401(3) and (4).

In 17.20.1418(9), additions are proposed to ensure timely submittal of information necessary for air, water quality, and other Department permits.

In 17.20.1418(10), amendments are proposed to provide a bit of clarification to the range of mitigation measures that the Department needs to consider when making its determination under 75-20-301(3), MCA. The proposed language would require the applicant to identify potentially significant impacts and mitigation so that the Department can study the range of impacts and mitigating measures in order to make its determination under 75-20-301(3), MCA. Proposed amendments also provide that mitigating measures need to be identified for the proposed site and off-site associated facilities. Off-site associated facilities are within the scope of the Department's decision under 75-20-301(3), MCA. Addition of the term "waste disposal" is proposed because generation facilities create waste that, if not disposed of properly, can cause significant impacts.

In 17.20.1418(11), (12), and (13), new language is proposed to help ensure that the Department has sufficient information to make the finding required by 75-20-301(3), MCA, which requires the Department to require cost-effective mitigation of significant impacts.

In 17.20.1418(14), new language is proposed to adopt Department Circular MFSA-1 that requires a baseline study and impact assessment found in 17.20.1419. The Board is proposing to transfer these requirements to a circular.

17.20.1426 LINEAR FACILITIES, GENERAL REQUIREMENTS OF THE ALTERNATIVE SITING STUDY (1) An application for a linear facility must contain an alternative siting study and baseline environmental data as specified in ARM 17.20.1426 through 17.20.1431, 17.20.1434 through 17.20.1440, and 17.20.1444 through 17.20.1447.

(1) and (2) remain the same, but are renumbered (2) and (3).

~~(3) An application for a proposed generation or conversion facility as defined by 75-20-104(10)(a), MCA, must contain the applicable information required by ARM 17.20.1426 through 17.20.1431, and 17.20.1434 through 17.20.1438, to select and evaluate study corridors for proposed new or upgraded linear facilities that would be associated with the generation or conversion facility if it were located at the applicant's preferred or alternative sites, unless the applicant can demonstrate that less detailed information meets these requirements, based on considerations of voltage, capacity, or length of the linear associated facilities, the homogeneity of the geographic area that would be traversed or the likelihood that no impacts will result from these associated facilities. Linear associated facilities affected include those that transport major amounts of materials, including fuel and water, required by the generation or~~

~~conversion facility to produce energy or other primary products, and those that transmit or transport the energy or primary products of a facility to load~~
~~centers or to a point of interconnection with a transmission or transportation system. Based on the applicable information required by ARM 17.20.1426 through 17.20.1431, and 17.20.1434 through 17.20.1438, the applicant shall compare the study corridors and select a preferred corridor or corridors, as appropriate, for the linear associated facilities. An application must contain the following:~~

~~(a) a summary of the most important adverse impacts of each linear associated facility for each of the study corridors;~~

~~(b) a ranking of the study corridors from best to worst for each of the impact and cost categories listed in ARM 17.20.1446(3), including an indication of the relative differences among the study corridors for each category, and a comparative ranking of the study corridors considering all of the categories; and~~

~~(c) an explanation of the applicant's reasons for selecting the preferred corridor(s), and an explanation of the consideration given to the applicable preferred route criteria listed in ARM 17.20.1437, exclusion areas listed in 17.20.1428, sensitive areas listed in 17.20.1429, and areas of concern listed in 17.20.1430 or 17.20.1431.~~

(4) and (5) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: 75-20-205, MCA, used to contain a provision that "centerlines", or the final location for a linear facility or a linear associated facility, would be determined in a second phase of the certification process. See 17.20.1702 and 17.20.1705. For a generation or conversion facility, an applicant was required to do a corridor level analysis initially and later fill in the detail during the centerline process. 17.20.1426(3) contains this corridor level analysis requirement. The separate centerline process was eliminated when 75-20-205, MCA, was repealed in 1997 and this corridor level analysis is neither appropriate nor necessary to make the determinations now required in 75-20-301(3), MCA.

<u>17.20.1501 ENERGY GENERATION AND CONVERSION FACILITIES, GENERAL REQUIREMENTS OF THE FACILITY DESCRIPTION AND DESIGN</u>

(1) An application for an energy generation or conversion facility must contain an engineering description of the facility in detail sufficient to enable the department to assess the environmental impacts of construction, operation, maintenance, and decommissioning, and to assess reliability and construction and operation costs of the proposed facility at the ~~preferred~~ <u>proposed</u> site as specified in ARM 17.20.1502 through 17.20.1505. These requirements apply specifically to fossil-fueled facilities and other facilities that utilize

transportable energy resources. An equivalent description and design is required for all energy generation or conversion facilities defined by 75-20-104(8), MCA. Applicants for energy generation or conversion facilities that employ a nontransportable energy resource must consult with the department concerning facility description and design requirements.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: 17.20.1501(1) is proposed to be modified to delete "preferred" and insert "proposed" to reflect legislative changes that removed the requirement to consider alternative sites for generation and conversion facilities.

17.20.1502 ENERGY GENERATION AND CONVERSION FACILITIES, DESIGN CHARACTERISTICS (1) An application must include a list of any reports, documents, studies, or calculations that indicate that the preliminary design specifications and performance objectives for the major components or process areas of the facility are adequate and can be maintained in the continuous operation of the facility. Design peak operating volume or rate must be described, including the length of time the various levels of peak operation can be sustained.

(2) through (4) remain the same.

(5) An application must contain a description of associated facilities, including:

(a) ~~transportation systems:~~ a description of any major existing or new transportation system or terminal that would be used during the construction, operations, maintenance or decommissioning of the proposed facility~~;~~ and an estimate of the type, duration, and intensity of that use;

(b) ~~transmission facilities:~~ a description meeting the requirements of ARM 17.20.1509 and 17.20.1510, for facilities of 230 kV and larger; for ~~facilities~~ power lines smaller than 230 kV, a general description of the components listed in ARM 17.20.1509 is sufficient;

(c) communication installations~~:~~; ~~microwave towers;~~

(d) ~~fuel-handling systems:~~ the proposed source of the fuel to be used by the facility and, if applicable, alternative fuel sources consistent with ~~17.20.1419(8)~~ department Circular MFSA-1, Section 3.11, and a description of equipment and portions of the site that will be used to store, prepare and transfer the fuel to the point of consumption;

(e) ~~water supply systems:~~ all sources for water to be used by the facility, structures that would pump, convey, store, or treat the water, proposed drainage or flood control structures, and a description of the processes used to deliver water to and discharge water from the site, including operation and monitoring plans for water-supply reservoirs, ponds, and other diversions for municipal or industrial use;

(f) ~~waste-handling systems:~~ all waste-handling systems, both on and off-site, including a description of the collection, storage, treatment, disposal processes and monitoring procedures and plans for each system, consistent with the requirements of ARM 17.20.1504(5) (Operation and Maintenance Analysis); ~~and~~

(g) any other permanent structures or installations and temporary structures or installations, both on- and off-site, that would be used only during the construction phase; and

(h) for water and fuel pipelines, a description meeting the requirements of ARM 17.20.1509 and 17.20.1511.

(6) An application must contain a topographic map at a scale of 1:4800 showing the proposed location of all facility structures and nonlinear associated facilities at or associated with the ~~preferred~~ proposed site.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: 17.20.1502(1). The phrase "or rate" is proposed to better reflect the terminology used in describing the production of generation facilities.

17.20.1502(5)(b). The term "power lines" is proposed to require that a description of associated power lines is needed even if the power lines are not large enough or long enough to be considered transmission facilities in order to address potentially significant impacts from these lines.

17.20.1502(5)(c) is proposed to be amended to delete the term "microwave towers" because it is already included within communication facilities. The rule as proposed would require a description of any communication installation that would be constructed.

17.20.1502(5)(d) is proposed to be amended to coincide with the proposed repeal of 17.20.1419 and transfer of baseline information requirements for generation and conversion facilities to Department Circular MFSA-1.

17.20.1502(5)(g) is proposed to be amended to clarify that both on-site and off-site structures or installations must be considered when describing associated facilities. This description is necessary for the identification of any impacts associated with these facilities.

17.20.1502(5)(h) is proposed to be added to require a description of design characteristics for pipelines that handle water or fuel. These pipelines are typically not large enough or long enough to be considered as facilities by themselves, but impacts from construction of these facilities must be considered in making the determinations required in subchapter 16.

17.20.1502(6) is proposed to be amended to delete "preferred" and insert "proposed" to reflect legislative changes that removed the requirement to consider alternative sites for generation and conversion facilities.

The internal catchphrases have been eliminated from (5)(a) through (f) to comply with style preferences of the Secretary of State.

17.20.1503 ENERGY GENERATION AND CONVERSION FACILITIES, CONSTRUCTION DESCRIPTION (1) An application for a generation or conversion facility must include a preliminary construction schedule, ~~and~~ a description of typical equipment, and a description of the sequential steps involved in carrying out major construction activities, including site preparation and an estimate of the amount of ground disturbance. The schedule must include associated facilities and relocations or development of transportation and other public use facilities necessitated by project construction, and methods of maintaining service during these activities.

(2) An application for a generation or conversion facility must contain a description of the following:

(a) and (b) remain the same.

(c) a schedule showing the anticipated timing of activities; ~~and~~

(d) methods the applicant will use for fire control~~.~~;

(e) for associated powerlines, a description meeting the requirements of ARM 17.20.1510, for voltages of 230kV and larger. For voltages less than 230kV, a general description of the components listed in ARM 17.20.1510 is sufficient; and

(f) for associated pipelines, a description meeting the requirements of ARM 17.20.1511.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: This amendment would add subsections (2)(e) and (2)(f) to ensure that construction of associated pipelines and power lines and any impacts resulting from their construction are included in the project description. Language that differentiates information requirements for construction description by voltage parallels language found in 17.20.1502(5)(b) that differentiates requirements for design by voltage.

17.20.1504 ENERGY GENERATION AND CONVERSION FACILITIES, OPERATION AND MAINTENANCE ANALYSIS (1) through (4) remain the same.

(5) An application must contain a qualitative and quantitative analysis of all materials that are projected to flow out of the facility. The analysis must include detailed chemical content of all output material based on the best information available, including material with radiological content. The method of using, treating, dispersing and disposing of materials in each of the following categories shall be discussed, including the method of monitoring the use, treatment, dispersal, disposal and ultimate reclamation of waste sites, as applicable, for each of the following categories:

(a) remains the same.

(b) waste materials~~,~~ including gases, liquids, and solids;

(c) energy forms such as heat that escape during processing; ~~and~~

(d) for coal conversion facilities which are proposed to produce more than one major product, the capability for alternative fuels production or capacity to alter the product mix of facility outputs~~.~~; and

(e) for associated powerlines and pipelines, a description meeting the requirements of ARM 17.20.1512.

(6) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: This amendment would add subsection (5)(e) to ensure that information related to the operation and maintenance of associated power lines and pipelines and any resulting impacts are included in the project description. This information is necessary to allow the Department to determine significant impacts, as is required in 75-20-301(3), MCA.

4. The proposed new rules provide as follows:

NEW RULE I ENERGY GENERATION AND CONVERSION FACILITIES, OPERATION UNDER CONTINGENT OPERATING C0NDITIONS (1) An application must contain a description of the methods of operation that will be used under contingent operating conditions to avoid significant impacts or disruption or damage to the environment or to human or industrial facilities.

(2) Contingent operating conditions include but are not limited to:

(a) extraordinary environmental conditions such as extreme cold, heat, drought, flooding, or earthquake, or extensive wildland fires;

(b) technical contingencies such as failure of facility components; and

(c) external system conditions such as transmission or pipeline system outages that lead to excessive congestion or inadequate capacity to carry the full output of the facility or to provide needed energy for the facility.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: This new rule would enable the Department to assess the impact risk of facility operation under conditions that are not normal or usual, but that are nevertheless reasonably likely to occur during the operating life of a proposed energy generation or conversion facility. This

information is necessary to allow the Department to determine significant impacts, as is required in 75-20-301(3), MCA.

NEW RULE II ENERGY GENERATION AND CONVERSION FACILITIES, INTERCONNECTION AND TRANSMISSION AGREEMENTS (1) An application must include:

(a) either a copy of any and all interconnection and transmission agreements involving the proposed facility, or the following information for each such agreement:

(i) a brief description of the obligations of and the benefits to the facility under the agreement;

(ii) a list of all parties to the agreement;

(iii) the time period during which the agreement is in effect;

(iv) a summary of the terms of the agreement; and

(v) the financial agreements; and

(b) a description of all current and planned negotiations with respect to interconnection of the facility and transmission of energy. The description must include a list of the parties to any negotiations and a general discussion of the history and current status of the negotiations.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: This new rule would incorporate information previously required in sub-chapter 5 Long-Range Plans. Information submitted is necessary to make the findings regarding significant impacts for a proposed generation or conversion facility in 75-20-301(3), MCA.

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

17.20.1509 LINEAR FACILITIES, DESIGN CHARACTERISTICS

(1) through (9) remain the same.

(10) For pipeline, an application must contain a description of the source of power for pump and compressor stations and indicate on maps at a scale of 1:24,000, the proposed and alternative location of power supply lines for these stations.

(11) An application must contain a description of communication facilities that will be used to control and monitor operation of the facility and their location, including but not limited to radio, microwave, or satellite antennas, and any fiber optic cables. If fiber optic cables are used, the application must describe the use of any excess communication capacity.

~~(10)~~(12) An application must contain a ~~A~~ specific engineering or design explanation of the opportunities and constraints for paralleling or sharing existing utility or transportation rights-of-way, or portions thereof, and if such opportunities were not chosen for part of the preferred route,

an explanation of the reasons, including insufficient right-of-way and/or other land use constraints.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: 17.20.1509(10). This information is needed to identify potentially significant impacts for linear facilities and for associated pipelines for generation and conversion facilities.

17.20.1509(11) is proposed to be added to provide a description of communication facilities used in the operation of linear facilities and associated facilities for energy generation and conversion facilities. This information is needed to identify potentially significant impacts for associated facilities for generation and conversion facilities and provide information for the finding of minimum adverse impact for linear facilities.

17.20.1509(12) is proposed to be amended to make grammatical corrections.

17.20.1511 LINEAR FACILITIES, PIPELINE FACILITIES AND ASSOCIATED FACILITIES, CONSTRUCTION DESCRIPTION (1) through (3) remain the same.

(4) An application must contain a description of the methods that will be used to salvage topsoil, including:

(a) the width of the construction right-of-way where topsoil will be salvaged;

(b) the depth to which topsoil would be salvaged;

(c) the locations where alternative methods of topsoil salvage would be implemented; and

(d) the methods to be employed to remove coarse rock from surface soils following construction.

~~(4)~~ (5) An application must contain a description of the types and sizes of roads needed to build and maintain the facility, an estimate of the road mileage and preliminary road locations required in addition to the right-of-way, if any, in order to construct the facility on the applicant's preferred route or proposed location for an associated pipeline, and an estimate of how much the roads will be used.

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

~~(6)~~ (7) An application must contain a discussion of the proposed and alternative methods of ~~trenched~~ stream crossings, including:

(a) specification of equipment types~~,~~;

(b) estimates of the width and depth of trenching~~,~~; ~~and~~

(c) estimates of the scour depth supported by a discussion of the methods and calculations used to make the estimates~~.~~; and

(d) amount of ground disturbance adjacent to stream crossings.

(7) and (8) remain the same, but are renumbered (8) and (9).

~~(9)~~ (10) An application must contain a description of the reclamation methods that will be used to restore the right-of-way~~, including a description of the proposed method for segregating topsoils from the remaining excavated material~~ on sidehills and over the ditch~~.~~, and the measures that will be implemented to address subsidence of soils over the trench after construction is completed.

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

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: The catchphrase for 17.20.1511 is proposed to be amended to clarify that associated pipelines are also addressed.

17.20.1511(4) is proposed to be added to provide a description of topsoil salvage techniques for pipelines. This information is needed to identify potentially significant impacts for pipelines. The information was formerly addressed in 17.20.1511(10).

17.20.1511(5). This amendment would add the phrase "or proposed location for an associated pipeline" to ensure that information needed to identify potentially significant impacts resulting from road construction is included in the project description.

17.20.1511(7). This amendment is proposed because there are a number of stream crossing techniques that could be used for pipeline construction, such as trenching, horizontal bores, directional drills and overhead crossings. Each has its own type of disturbance and resulting impact. The proposed amendments require the applicant to address the amount of disturbance near streams from all crossing types considered.

17.20.1511(10). This amendment would delete the phrase "including a description of the proposed method for segregating topsoils from the remaining excavated material". This information is included in proposed rule 17.20.1511(4). Because subsidence can occur if measures to prevent it are not implemented, language requiring it to be addressed has been added.

17.20.1512 LINEAR FACILITIES, OPERATION AND MAINTENANCE DESCRIPTION (1) through (4) remain the same.

(5) For pipelines, an application must describe the size and frequency of leaks that can be expected over the life of the proposed project.

(6) For pipelines, an application must describe leak detection systems to be employed during operations including sensitivity of the leak detection system, the time necessary to shut down the facility in the event of a leak, and expected time necessary to respond to a leak.

(7) For liquid pipelines, an application must include a detailed spill contingency plan describing:

(a) immediate notification procedures;

(b) the type and location of emergency response personnel and equipment;

(c) any mutual aid agreements to supply personnel and equipment and respond in the event of a spill;

(d) response procedures;

(e) equipment testing procedures;

(f) frequency of field training exercises; and

(g) plan update procedures. The plan shall be sufficiently detailed so that the department can determine the likely environmental effects resulting from a spill.

AUTH: 75-20-105, MCA
IMP: 75-20-211, MCA

REASON: 17.20.1512(5) through (7). These proposed amendments would allow the Department to obtain basic information about pipeline operations so it can be assured that impacts of pipeline leaks and spills can be minimized.

17.20.1604 ~~ALL~~ LINEAR FACILITIES, UTILITIES, PUBLIC INTEREST, CONVENIENCE AND NECESSITY STANDARD (1) In order for the board to find that a proposed facility will serve the public interest, convenience and necessity as required by 75-20-301(1)(f), MCA, the board must find and determine that the discounted net present value of benefits (less costs) is greater for the facility than for any other reasonable alternative, based on a determination of the following:

(a) the findings required by ARM ~~17.20.1601 or 17.20.1602~~ 17.20.1606;

(b) the cumulative environmental impacts of the facility, as determined for ARM ~~17.20.1603(h)~~ 17.20.1607(1)(g);

(c) through (f) remain the same.

(2) In making this finding the ~~board~~ department shall consider the effects of the facility on the public health, welfare and safety.

AUTH: 75-20-105, MCA
IMP: 75-20-301, 75-20-503, MCA

REASON: 17.20.1604 is proposed to be amended to apply only to linear facilities because the determination of public interest, convenience, and necessity is no longer required for generation and conversion facilities but still is required for linear facilities.

17.20.1604(1)(a) is proposed to be amended to delete cross-references to 17.20.1601 and 17.20.1602 because these sections are proposed for repeal since they apply to need findings for generation and conversion facilities and to correct the cross-reference for a need finding/standard for a linear facility to 17.20.1606.

17.20.1604(1)(b) is proposed for amendment to correct the cross-reference for cumulative environmental impacts for a linear facility from 17.20.1603, which is proposed for repeal,

to 17.20.1607(1)(g), which contains the cumulative impact requirement.

17.20.1604(2) is proposed for amendment to change "board" to "department" pursuant to changes in 75-20-301, MCA, concerning department approval of facilities.

6. The proposed new rule provides as follows:

NEW RULE III ENERGY GENERATION AND CONVERSION FACILITIES, DECISIONS (1) In making its decision under 75-20-301(3), MCA, the department shall identify all:

(a) significant environmental impacts; and

(b) reasonable, cost-effective mitigation measures for those impacts.

(2) For those significant environmental impacts that cannot be mitigated below the level of significance, the department shall determine whether there is a threat of serious injury or damage to the environment, the social and economic conditions of inhabitants of the affected area, and the health, safety, or welfare of area inhabitants.

(3) In determining the reasonableness of mitigating measures under 75-20-301(3)(a), MCA, the department shall consider appropriate factors including but not limited to whether the measure:

(a) is within or can reasonably be expected to be within an applicant's or the department's ability to implement;

(b) is technologically feasible as shown through research, successful prototype testing, or successful implementation in similar situations;

(c) is likely to succeed in mitigating the identified significant impact when implemented individually or in conjunction with other adopted measures; and

(d) can be monitored for implementation and effectiveness.

(4) In determining whether a mitigating measure is cost-effective under 75-20-301(3)(a), MCA, the department shall use the following analysis:

(a) estimate the net present value of the cost of implementing the mitigating measure;

(b) estimate the net present value of the benefits of implementing the measure, including:

(i) reductions in adverse environmental impacts of the facility and any other benefits, that are readily quantifiable and valued in monetary terms; and

(ii) reductions in adverse impacts, and any other benefits, that are not readily quantifiable or not readily valued in monetary terms.

(c) if (4)(a) is greater than (4)(b)(i), and (4)(b)(ii) is not deemed significant, the mitigating measure is not cost-effective; and

(d) if (4)(a) is less than or equal to (4)(b)(i), or if (4)(a) is greater than (4)(b)(i) and (4)(b)(ii) is deemed to be significant and sufficient to outweigh the value of (4)(a) minus (4)(b)(i), the mitigating measure is cost-effective.

(5) All mitigating measures upon which the department relies in its decision must be made conditions of the certificate.

(6) For each facility and associated facilities, a certificate of environmental compatibility must contain:

(a) an approved reclamation plan;

(b) an approved monitoring plan;

(c) any construction and reclamation bonds required by the department;

(d) a set of environmental specifications addressing measures to reduce impacts of construction, operation, and decommissioning; and

(e) a topographic map having a scale of 1:24,000 showing section lines, the site boundary, location of the facility, facility components, and any associated facility(ies).

(7) A certificate holder must comply with all terms of a certificate of environmental compatibility including but not limited to the items in (5) and (6) above.

AUTH: 75-20-105, MCA
IMP: 75-20-301, MCA

REASON: Sections (1) and (2) are necessary to advise applicants of how the Board intends for the Department to administer 75-20-301(3), MCA. This statute is susceptible to two interpretations. The first is that the agency must identify significant environmental impacts, impose all reasonable cost-effective mitigations, and, if any significant impacts remain, determine whether they constitute a serious threat to the environment, socio-economic condition, or public health, safety, or welfare. If they do, the Department is to deny the application. The second possible interpretation is that the Department is to issue the certificate if: (1) all reasonable cost-effective mitigations are incorporated, whether or not serious damage or injury to the environment, socio-economic conditions, or public health, safety, or welfare would result; or (2) no serious damage or injury would result, whether or not all reasonable cost-effective mitigations are incorporated. The Board believes that the former interpretation is more reasonable, more consistent with the Legislature in policy and findings as expressed in 75-20-102, MCA, and truer to the meaning intended by the 1997 Legislature when it adopted this language.

Section (3) is proposed to notify applicants of the factors the Department will use in determining reasonableness of mitigation. The term "reasonable" in this context means "sensible" or "not extreme". The Board believes that the factors listed implement this definition.

Section (4) would impose on the Department a methodology for determining "cost-effectiveness". This methodology was chosen because it is consistent with both the common understanding of the term and the technical definition of the term in the field of economics.

Section (5) is proposed because 75-20-301(3), MCA, requires that reasonable cost-effective mitigation of significant environmental impacts be incorporated into the facility.

Section (6) through (6)(d) and Section (7) are proposed to ensure that the reclamation plan, monitoring plan, any required bonds, and environmental specifications are conditions of the certificate and are therefore required and enforceable. Section (6)(e) and section (7) are proposed so that the area over which the Department has jurisdiction is clearly laid out.

7. The rules proposed for repeal are as follows.

17.20.101 GENERAL PROVISIONS (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1025, Administrative Rules of Montana.

17.20.102 ELIGIBLE EXEMPTIONS FOR UPGRADES (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1026, Administrative Rules of Montana.

17.20.103 ELIGIBLE EXEMPTIONS FOR RELOCATIONS (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1033, Administrative Rules of Montana.

17.20.104 ELIGIBLE EXEMPTIONS FOR RECONSTRUCTION (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1034, Administrative Rules of Montana.

17.20.105 NOTICE OF INTENT TO CONSTRUCT AN EXEMPT FACILITY (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1037, Administrative Rules of Montana.

17.20.106 BOARD ACTION (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1038, Administrative Rules of Montana.

17.20.107 CONSTRUCTION MONITORING BY DEPARTMENT (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1038, Administrative Rules of Montana.

17.20.108 LOCAL, STATE, AND FEDERAL PERMITS (Auth: 75-20-202, MCA; IMP, 75-20-202, MCA), located at page 17-1038, Administrative Rules of Montana.

REASON: Repeal of 17.20.101 through 17.20.108 Transmission Line Exemption. These rules implement 75-20-202, MCA. That statute was repealed in 1997.

17.20.501 GENERAL REQUIREMENTS (Auth: 75-20-105, MCA; IMP, 75-20-501, MCA), located at page 17-1091, Administrative Rules of Montana.

17.20.502 IDENTIFICATION OF FACILITIES AND EXPECTED APPLICATION DATES (Auth: 75-20-105, MCA; IMP, 75-20-501, MCA), located at page 17-1091, Administrative Rules of Montana.

17.20.503 SERVICE AREA UTILITIES, FORECASTED ENERGY DEMAND AND SUPPLY (Auth: 75-20-105, MCA; IMP, 75-20-501, MCA), located at page 17-1092, Administrative Rules of Montana.

17.20.504 SERVICE AREA UTILITIES, POOLING, INTERCONNECTION, EXCHANGE, PURCHASE AND SALE AGREEMENTS (Auth: 75-20-105, MCA; IMP, 75-20-501, MCA), located at page 17-1092, Administrative Rules of Montana.

17.20.505 SERVICE AREA UTILITIES, NEGOTIATIONS OVER RESOURCE ACQUISITION OR SALE, POOLING, INTERCONNECTION, TRANSMISSION, EXCHANGE, PURCHASE OR SALE OF ENERGY (Auth: 75-20-105, MCA; IMP, 75-20-501, MCA), located at page 17-1093, Administrative Rules of Montana.

17.20.506 COMPETITIVE UTILITIES AND NONUTILITIES, PROJECTED DEMAND (Auth: 75-20-105, MCA; IMP, 75-20-501, MCA), located at page 17-1093, Administrative Rules of Montana.

REASON: Repeal of 17.20.501 through 17.20.506. These rules implement 75-20-501, MCA, which was repealed in 1997.

17.20.701 PURPOSE OF NOTICE (Auth: 75-20-105, MCA; IMP, 75-20-214, MCA), located at page 17-1115, Administrative Rules of Montana.

17.20.702 CONTENT OF NOTICE OF INTENT (Auth: 75-20-105, MCA; IMP, 75-20-214, MCA), located at page 17-1115, Administrative Rules of Montana.

17.20.703 CHANGES OR ADDITIONS TO NOTICE (Auth: 75-20-105, MCA; IMP, 75-20-214, MCA), located at page 17-1115, Administrative Rules of Montana.

17.20.704 FILING FEE REDUCTION (Auth: 75-20-105, MCA; IMP, 75-20-214, MCA), located at page 17-1115, Administrative Rules of Montana.

REASON: Repeal of 17.20.701 through 17.20.704. These rules implement 75-20-214, MCA, which was repealed in 1985.

17.20.812 ENERGY GENERATION AND CONVERSION FACILITIES, ESTIMATED COST OF ENERGY OR PRODUCT (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-215, MCA), located at page 17-1128, Administrative Rules of Montana.

REASON: 17.20.812 is proposed for repeal because the information is no longer necessary to make the determinations

in 75-20-301(3), MCA, for generation or conversion facilities. The information was necessary to make a determination of whether the facility minimizes adverse environmental impact. In Chapter 329, Laws of 1997, the Legislature eliminated this requirement for generation and conversion facilities.

17.20.816 ALL FACILITIES, SERVICE AREA UTILITIES, COPIES OF CONTRACTS FOR PURCHASE OF MATERIALS OR SALE OF ENERGY FROM THE PROPOSED FACILITY (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-215, MCA), located at page 17-1128, Administrative Rules of Montana.

REASON: This rule is proposed for repeal because the information required for linear facilities was never used. Linear facilities do not involve the sale of energy but only involve the transport of energy. The information required for generation or conversion facilities was used in making a determination of need. The requirement for a determination of need for generation and conversion facilities was repealed in 1997. The information required by this rule is not necessary to make the determinations in 75-20-301(3), MCA.

17.20.902 GENERATION AND CONVERSION FACILITIES, RESOURCE FORECAST (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1151, Administrative Rules of Montana.

REASON: This rule implements 75-20-211, MCA, as it read prior to its amendment in Chapter 329, Laws of 1997. Prior to 1997, an application was required to demonstrate the need for the facility. This rule requires information related to the need determination. In 1997, the Legislature eliminated the need requirement for generation and conversion facilities. The rule is therefore no longer authorized by statute and must be repealed.

17.20.903 GENERATION AND CONVERSION FACILITIES, POOLING, INTERCONNECTION, EXCHANGE, PURCHASE AND SALE AGREEMENTS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA) located at page 17-1152, Administrative Rules of Montana.

REASON: The repeal is necessary because most of these materials, with the exception of interconnection agreements, are no longer necessary with the elimination of the finding of need for generation conversion facilities (see Chapter 329, Laws of 1997). Interconnection agreements have been moved to subchapter 15.

17.20.904 GENERATION AND CONVERSION FACILITIES, DATA REQUIREMENTS FOR ENERGY AND PEAK DEMAND (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1152, Administrative Rules of Montana.

17.20.905 GENERATION AND CONVERSION FACILITIES, ASSESSMENT OF THE ROLE OF THE PROPOSED FACILITY IN MEETING ENERGY NEEDS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1155, Administrative Rules of Montana.

17.20.906 GENERATION AND CONVERSION FACILITIES, UNCERTAINTY ANALYSIS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA) located at page 17-1155, Administrative Rules of Montana.

17.20.908 GENERATION AND CONVERSION FACILITIES, INTERRUPTIBLE AND CURTAILABLE LOAD DATA (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1156, Administrative Rules of Montana.

REASON: 17.20.904, 17.20.905, 17.20.906 and 17.20.908 implemented 75-20-503, MCA, which dealt with long-range plans and the environmental factors that need to be evaluated when reviewing applications for certification. 75-20-503, MCA, was repealed in Chapter 329, Laws of 1997. These rules also implement part of 75-20-211, MCA but these requirements were aimed at information required in an application to show need for a facility. The showing of need is no longer required for generation and conversion facilities (see Chapter 329, Laws of 1997); therefore, these rules are proposed for repeal because they are no longer authorized by statute.

17.20.909 GENERATION AND CONVERSION FACILITIES, DESTINATION AND DISTRIBUTION PATTERNS OF ENERGY TO BE PRODUCED (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1159, Administrative Rules of Montana.

REASON: The requirements of this rule are proposed to be moved to Department Circular MFSA-1, Section 3.31.

17.20.910 GENERATION AND CONVERSION FACILITIES, ENERGY CONSERVATION PROGRAMS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1160, Administrative Rules of Montana.

REASON: This rule implemented 75-20-503, MCA, which dealt with long-range plans and the environmental factors that need to be evaluated when reviewing applications for certification. 75-20-503(1)(f), MCA required examination of conservation activities which could reduce the need for more energy. 75-20-503, MCA was repealed in 1997 (see Chapter 329, Laws of 1997). This information is not necessary to make the determination required in 75-20-301(3), MCA; therefore, the rule is proposed for repeal because it is no longer authorized by statute.

17.20.911 GENERATION AND CONVERSION FACILITIES, CATEGORIES FOR REPORTING CUSTOMER END-USE DATA (Auth:

75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1160, Administrative Rules of Montana.

REASON: This rule implemented 75-20-503, MCA, which dealt with long-range plans and the environmental factors that need to be evaluated when reviewing applications for certification. 75-20-503, MCA was repealed in 1997 (see Chapter 329, Laws of 1997). This information is not necessary to make the determination required in 75-20-301(3), MCA. Because the rule is no longer authorized by statute, it must be repealed.

17.20.1201 MARKET ANALYSIS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1201, Administrative Rules of Montana.

17.20.1202 MARKETABILITY FORECASTS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1201, Administrative Rules of Montana.

17.20.1203 UNCERTAINTY ANALYSIS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1202, Administrative Rules of Montana.

REASON: 17.20.1201 through 17.20.1203 implement 75-20-503, MCA, which dealt with long-range plans and the environmental factors that need to be evaluated when reviewing applications for certification. 75-20-503, MCA, was repealed in 1997. These rules also implement part of 75-20-211, MCA, which required an application to demonstrate need for the facility. The showing of need is no longer required for generation and conversion facilities (see Chapter 329, Laws of 1997). Because these rules are no longer authorized by statute, they must be repealed.

17.20.1303 SERVICE AREA UTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVE LOAD-RESOURCE BALANCES (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1214, Administrative Rules of Montana.

REASON: This repeal is proposed to reflect deregulation of electrical generation by Chapter 372, Laws of 1999, which moved generation facilities into competitive wholesale markets. Information on load-resource balances was previously required for the determination of need for generation and conversion facilities. The determination of need requirement was repealed for generation and conversion facilities in 1997. The information required by this rule is not necessary to make the current determinations in 75-20-301(3), MCA.

17.20.1309 COMPETITIVE UTILITIES AND NONUTILITIES, GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVES (Auth: 75-20-105, MCA; IMP, 75-20-211,

75-20-503, MCA), located at page 17-1221, Administrative Rules of Montana.

REASON: This repeal is proposed because all generation and conversion facilities are proposed to be treated alike in 75.20.1301 regardless of ownership (whether they are service area utilities, competitive utilities, or non-utilities). The information formerly required by 17.20.1309 would be adequately covered in 17.20.1301.

17.20.1310 COMPETITIVE UTILITIES AND NONUTILITIES, GENERATION AND CONVERSION FACILITIES, CRITERIA FOR EVALUATION OF ALTERNATIVES TO THE PROPOSED FACILITY (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1221, Administrative Rules of Montana.

REASON: This repeal is proposed because all generation and conversion facilities are proposed to be treated alike in 17.20.1302 regardless of ownership (whether they are service area utilities, competitive utilities, or non-utilities). The information formerly required by 17.20.1310 would be covered in 17.20.1302.

17.20.1401 ENERGY GENERATION AND CONVERSION FACILITIES, GENERAL REQUIREMENTS OF THE ALTERNATIVE SITING STUDY (Auth: 75-20-105; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1241, Administrative Rules of Montana.

17.20.1402 ENERGY GENERATION AND CONVERSION FACILITIES, PREFERRED SITE CRITERIA (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1242, Administrative Rules of Montana.

17.20.1403 ENERGY GENERATION AND CONVERSION FACILITIES, EXCLUSION AREAS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1243, Administrative Rules of Montana.

17.20.1404 ENERGY GENERATION AND CONVERSION FACILITIES, SENSITIVE AREAS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1243, Administrative Rules of Montana.

17.20.1405 ENERGY GENERATION AND CONVERSION FACILITIES, AREAS OF CONCERN (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1247, Administrative Rules of Montana.

17.20.1408 ENERGY GENERATION AND CONVERSION FACILITIES, DELINEATION OF THE STUDY AREA (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1251, Administrative Rules of Montana.

17.20.1409 ENERGY GENERATION AND CONVERSION FACILITIES, ANALYSIS OF DELIVERED COST OF ENERGY IN THE STUDY AREA (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1252, Administrative Rules of Montana.

17.20.1410 ENERGY GENERATION AND CONVERSION FACILITIES, IDENTIFICATION OF ECONOMICALLY FEASIBLE SITING AREAS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1253, Administrative Rules of Montana.

17.20.1411 ENERGY GENERATION AND CONVERSION FACILITIES, RECONNAISSANCE (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1253, Administrative Rules of Montana.

17.20.1412 ENERGY GENERATION AND CONVERSION FACILITIES, SELECTION OF CANDIDATE SITING AREAS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1254, Administrative Rules of Montana.

17.20.1415 ENERGY GENERATION AND CONVERSION FACILITIES, INVENTORY, GENERAL REQUIREMENTS (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1257, Administrative Rules of Montana.

17.20.1416 ENERGY GENERATION AND CONVERSION FACILITIES, INVENTORY, ENVIRONMENTAL INFORMATION (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1258, Administrative Rules of Montana.

17.20.1417 ENERGY GENERATION AND CONVERSION FACILITIES, SELECTION OF ALTERNATIVE SITES (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1263, Administrative Rules of Montana.

17.20.1419 ENERGY GENERATION AND CONVERSION FACILITIES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1267, Administrative Rules of Montana.

17.20.1420 ENERGY GENERATION AND CONVERSION FACILITIES, COMPARISON OF ALTERNATIVE SITES (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1285, Administrative Rules of Montana.

17.20.1421 ENERGY GENERATION AND CONVERSION FACILITIES, SELECTION OF THE PREFERRED SITE (Auth: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1286, Administrative Rules of Montana.

REASON: In Chapter 312, Laws of 1987, the Legislature eliminated the requirement that an application for a generation or conversion facility contain alternative sites. In Chapter 583, Laws of 1995, the Legislature eliminated the

requirement in 75-20-303, MCA, that the Department's certification opinion contain an analysis of the alternative to the proposed facility. 17.20.1401 through 17.20.1405, 17.20.1408 through 17.20.1412, 17.20.1415 through 17.20.1417, 17.20.1420, and 17.20.1421 implemented those now-repealed portions of MFSA. Certain environmental information required in 17.20.1404, 17.20.1405, 17.20.1411, and 17.20.1416 is, however, necessary to assess significant impacts at a proposed site for an energy generation or conversion facility and to make the findings and determinations required by 75-20-301(3), MCA. The Board is proposing to move those requirements to Circular MFSA-1 in order to shorten administrative rules and provide baseline study and analysis requirements in a convenient format for applicants. Because the requirements in these rules are either no longer authorized by statute or are proposed for relocation in the circular, the Board is proposing the repeal of these rules.

17.20.1419 is proposed for repeal because the Board is proposing to transfer the requirements contained in the rule to Circular MFSA-1 in order to shorten administrative rules and provide baseline study and analysis requirements in a convenient format.

17.20.1601 ENERGY GENERATION AND CONVERSION FACILITIES, SERVICE AREA UTILITIES, NEED STANDARD (Auth: 75-20-105, MCA; IMP, 75-20-301, 75-20-503, MCA), located at page 17-1376, Administrative Rules of Montana.

17.20.1602 ENERGY GENERATION AND CONVERSION FACILITIES, COMPETITIVE UTILITIES, NEED STANDARD (Auth: 75-20-105, MCA; IMP, 75-20-301, 75-20-503, MCA), located at page 17-1377, Administrative Rules of Montana.

17.20.1603 ENERGY GENERATION AND CONVERSION FACILITIES, MINIMUM IMPACT STANDARD (Auth: 75-20-105, MCA; IMP, 75-20-301, 75-20-503, MCA), located at page 17-1377, Administrative Rules of Montana.

REASON: 17.20.1601 and 17.20.1602 implement requirements in MFSA that the applicant demonstrate and the Department find a need for the facility. In Chapter 329, Laws of 1997, the Legislature eliminated this requirement for generation and conversion facilities. 17.20.1603 implemented the requirement in MFSA that the facility minimize adverse environmental impacts. In Chapter 329, Laws of 1997, the Legislature eliminated this requirement for generation and conversion facilities. Because these rules are no longer authorized by statute, they must be repealed.

8. Concerned persons may obtain a copy of proposed Circular MFSA-1 by calling (406) 444-2544 or by writing to the Board at the address listed in 10 below. In addition, a copy of the circular is available at www.deq.state.mt.us under the rules and regulations link.

9. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than November 8, 2001. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5:00 p.m. November 8, 2001.

10. If persons who are directly affected by the proposed actions wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Board of Environmental Review, P.O. Box 200901, Helena, MT 59620-0901. A written request for hearing must be received no later than November 8, 2001

11. If the Board receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those organizations directly affected has been determined to be 4 based on the number of co-ops, utilities and federal agencies that may build transmission facilities.

12. 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., PO Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, or may be made by completing a request form at any rules hearing held by the Board.

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

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 October 1, 2001.

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

In the matter of the adoption of NEW RULE I and the amendment of ARM 17.30.502, 17.30.602, 17.30.607 through 17.30.611, 17.30.621 through 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	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On November 7, 2001, at 10:00 a.m. in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a hearing to consider the proposed adoption and amendment of the above-stated rules pertaining to surface water quality.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., October 29, 2001, to advise us of the nature of the accommodation that you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The proposed new rule provides as follows:

NEW RULE I INCORPORATIONS BY REFERENCE (1) The board hereby adopts and incorporates by reference the following state and federal requirements and procedures as part of Montana's surface water quality standards:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December 2001 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive and harmful parameters;

(b) the Water Quality Standards Handbook Second Edition (US EPA, September 1993, EPA-823-B-93-002) that sets forth procedures for development of site-specific criteria;

(c) 40 CFR Part 133 (July 1, 1991), which establishes requirements for the level of effluent quality through the application of secondary treatment or its equivalent;

(d) 40 CFR Chapter I, Subchapter N (July 1, 1991), which establishes effluent guidelines and standards for point source discharges;

(e) 40 CFR 136 (July 1, 1991), which establishes guidelines and procedures for the analysis of pollutants; and

(f) 40 CFR 136 (July 1, 2000), which establishes guidelines and procedures for the analysis of pollutants.

(2) Copies of the materials listed in (1) may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

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

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

17.30.502 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, and ARM Title 17, chapter 30, subchapters 6 and 7, apply throughout this subchapter:

(1) through (13) remain the same.

(14) The board hereby adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December 2001 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters. Copies of Circular WQB-7 are available from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

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

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) through (5) remain the same.

(6) "Conventional water treatment" means in order of application the processes of coagulation, sedimentation, filtration and ~~chlorination~~ disinfection. If determined necessary by the department, it also includes taste and odor control and lime softening.

(7) through (13) remain the same.

(14) "Mixing zone" means the area of a water body contiguous to an effluent with characteristics qualitatively or quantitatively different from those of the receiving water. The mixing zone is a place where effluent and receiving water mix and not a place where effluents are treated. Certain water quality standards may not apply in the mixing zone for those parameters regulated by a MPDES or NPDES permit. An effluent, in its mixing zone, may not block passage of aquatic organisms nor may it cause acutely toxic conditions, except that ammonia, chlorine, and dissolved oxygen may be present at concentrations so as to cause potentially toxic conditions in no more than 10% of the mixing zone provided that there is no lethality to aquatic organisms passing through the mixing zone. The area in which these exceedences may be allowed shall be as small as practicable. Provisions for specific mixing zones will be determined on a case by case basis by

application of the department's surface water mixing zone ~~implementation guide~~ rules in ARM 17.30.501 through 17.30.518.

(15) through (19) remain the same.

(20) "Pollutants" means sewage, industrial wastes and other wastes as those terms are defined in 75-5-103~~(1)(3)~~ (12), (19), (26), MCA.

(21) through (29) remain the same.

~~(30) The board hereby adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (September 1999 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water. Copies of Circular WQB 7 may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

~~(31) ARM Title 17, chapter 30, subchapter 5, which contain criteria to be used to determine the mixing zones appropriate to different sets of conditions. A copy of ARM Title 17, chapter 30, subchapter 5 may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, Mt 59620-0901 {phone: (406)444-2406}.~~

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

17.30.607 WATER-USE CLASSIFICATIONS--CLARK FORK-COLUMBIA RIVER DRAINAGE EXCEPT THE FLATHEAD AND KOOTENAI RIVER DRAINAGES (1) The water-use classifications adopted for the Clark Fork of the Columbia River drainage are as follows:

~~(1)~~ (a) Clark Fork River drainage except waters listed in ~~(a)-(n)~~ (1)(a)(i) through (xv) below B-1

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

~~(i)~~ (ii) Hearst Lake drainage to the Lower Hearst Inlet (approximately at latitude 46.1541, longitude -113.0384) and Fifer Gulch drainage to the Anaconda city limits. (Anaconda municipal water supply). . . . . .A-Closed

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

~~(c)~~ (iv) Yankee Doodle Creek drainage to and including the North Butte water supply reservoir (approximately at latitude 46.0905, longitude -113.0384) . . . . . .A-Closed

~~(d)~~ (v) Basin Creek drainage to and including the South Butte water supply reservoir (approximately at latitude 45.8543, longitude -112.5454) . . . . . A-Closed

(e) through (l) remain the same, but are renumbered (vi) through (xiii).

~~(m)~~ (xiv) Ashley Creek drainage to the Thompson Falls water supply intake (approximately at latitude 47.6066, longitude -115.3). . . . . .A-Closed

~~(n)~~ (xv) Pilgrim Creek drainage to the Noxon water supply intake (approximately at latitude 47.9906, longitude -115.7747) A-1

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

17.30.608 WATER-USE CLASSIFICATIONS--FLATHEAD RIVER DRAINAGE (1) The water-use classifications adopted for the Flathead River are as follows:

~~(1)~~ (a) Flathead River drainage above Flathead Lake except waters listed in ~~(a)-(h)~~ (1)(a)(i) through (viii) below B-1

~~(a)~~ (i) Essex Creek drainage to the Essex water supply intake (approximately at latitude 48.2668, longitude -113.639). . . . . .A-Closed

(b) through (d) remain the same, but are renumbered (ii) through (iv).

~~(e)~~ (v) Haskill Creek drainage to the Whitefish water supply intake (approximately at latitude 48.437, longitude -114.328) A-1

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

~~(h)~~ (viii) ~~North~~ The mainstems of the north and middle forks of the Flathead River above their junction A-1

~~(2)~~ (b) Flathead Lake and its tributaries from Flathead River inlet to US Highway 93 bridge at Polson except Swan River and portions of Hellroaring Creek as listed in ~~(a) through (c)~~ (1)(b)(i) through (iii) below but including Swan Lake proper and Lake Mary Ronan proper. A-1

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

~~(3)~~ (c) Flathead River drainage below the highway bridge at Polson to confluence with Clark Fork River except tributaries listed in ~~(a)-(h)~~ (1)(c)(i) through (viii) below B-1

~~(a)~~ (i) Second Creek drainage to the Ronan water supply intake (approximately at latitude 47.546, longitude -114.0268) . . . . . A-Closed

(b) and (c) remain the same, but are renumbered (ii) and (iii).

~~(d)~~ (iv) Hot Springs Creek drainage to the Hot Springs water supply intake (approximately at latitude 47.6096, longitude -114.688) . . . . . A-Closed

(e) through (h) remain the same, but are renumbered (v) through (viii).

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

17.30.609 WATER-USE CLASSIFICATIONS--KOOTENAI RIVER DRAINAGE (1) The water-use classifications adopted for the Kootenai River are as follows:

~~(1)~~ (a) All waters except those listed in ~~(a)-(d)~~ (1)(a)(i) through (iv) below. B-1

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

~~(d)~~ (iv) Flower Creek drainage to the Libby water supply intake (approximately at latitude 48.356, longitude -115.5676) A-1

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

17.30.610 WATER-USE CLASSIFICATIONS--MISSOURI RIVER DRAINAGE EXCEPT YELLOWSTONE, BELLE FOURCHE, AND LITTLE MISSOURI RIVER DRAINAGES (1) The water-use classifications adopted for the Missouri River are as follows:

~~(1)~~ (a) Missouri River drainage to and including the Sun River drainage except tributaries listed in ~~(a) through (m)~~ (1)(a)(i) through (xiii) below B-1

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

~~(b)~~ (ii) Lyman Creek (approximately at latitude 45.7305, longitude -110.9839) and Sourdough (Bozeman) Creek (approximately at latitude 45.5987, longitude -111.0266) drainages to the Bozeman water supply intakes . . . . A-Closed

~~(c)~~ (iii) Hyalite Creek drainage to the Bozeman water supply intake (approximately at latitude 45.5618, longitude -111.0709) A-1

~~(d)~~ (iv) Big Hole River drainage to Butte Water Company intake (approximately at latitude 45.7645, longitude -112.7872) above Divide A-1

(e) through (g) remain the same, but are renumbered (v) through (vii).

~~(h)~~ (viii) McClellan Creek drainage to the East Helena water supply intake (approximately at latitude 46.551, longitude -111.8964). A-1

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

~~(j)~~ (x) Ten Mile Creek drainage to the Helena water supply intake (approximately at latitude 46.5731, longitude -112.2145) A-1

~~(k)~~ (xi) Willow Creek drainage to the White Sulphur Springs water supply intake (approximately at latitude 46.5191, longitude -110.8119). . . . . .A-Closed

(l) and (m) remain the same, but are renumbered (xii) and (xiii).

~~(2)~~ (b) Missouri River drainage from Sun River to Rainbow Dam B-2

~~(3)~~ (c) Missouri River drainage from Rainbow Dam in Great Falls to the Marias River except waters listed in ~~(a) through (d)~~ (1)(c)(i) through (iv) below B-3

~~(a)~~ (i) Belt Creek drainage to and including Otter Creek drainage except portion of O'Brien Creek listed in ~~(i)~~ (1)(c)(i)(A) below B-1

~~(i)~~ (A) O'Brien Creek drainage to the Neihart water supply intake (approximately at latitude 46.9147, longitude -110.7322). A-1

(b) through (d) remain the same, but are renumbered (ii) through (iv).

~~(4)~~ (d) Marias River drainage except the tributaries and segments listed in ~~(a) through (f)~~ (1)(d)(i) through (vi) below B-2

~~(a)~~ (i) Cutbank Creek drainage except waters listed in ~~(i) and (ii)~~ (1)(d)(i)(A) and (B) below B-1

(i) and (ii) remain the same, but are renumbered (A) and (B).

~~(b)~~ (ii) Two Medicine Creek drainage except for the waters listed in ~~(i) through (iii)~~ (1)(d)(ii)(A) through (C) below. B-1

(i) through (iii) remain the same, but are renumbered (A) through (C).

(c) through (e) remain the same, but are renumbered (iii) through (v).

~~(f)~~ (vi) Teton River below ~~Highway~~ ~~(~~Interstate~~)~~ 15 . B-3

~~(5)~~ (e) Missouri River drainage from Marias River to Fort Peck Dam except waters listed in ~~(a) through (f)~~ (1)(e)(i) through (vi) below C-3

(a) through (f) remain the same, but are renumbered (i) through (vi).

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

~~(7)~~ (g) Milk River drainage from source (or from the Glacier National Park Boundary) to the eastern mainstem crossing of the International Boundary B-1

(8) and (8)(a) remain the same, but are renumbered (h) and (h)(i).

~~(b)~~ (ii) Big Sandy Creek drainage to Town of Big Sandy infiltration wells (approximately at latitude 48.1831, longitude -110.0851) B-1

(c) and (d) remain the same, but are renumbered (iii) and (iv).

~~(9)~~ (i) Missouri River drainage from Milk River to North Dakota boundary except waters listed in ~~(a) through (d)~~ (1)(i)(i) through (iv) below C-3

(a) through (d) remain the same, but are renumbered (i) through (iv).

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

17.30.611 WATER-USE CLASSIFICATION--YELLOWSTONE RIVER DRAINAGE (1) The water-use classifications adopted for the Yellowstone River are as follows:

~~(1)~~ (a) Yellowstone River drainage to the Laurel water supply intake (approximately at latitude 45.6557, longitude -108.7594) B-1

~~(2)~~ (b) Yellowstone River drainage from the Laurel water supply intake to the Billings water supply intake (approximately at latitude 45.7745, longitude -108.4778) except the tributaries listed in ~~(a)-(c)~~ (1)(b)(i) through (iii) below. B-2

~~(a)~~ (i) Clarks Fork of the Yellowstone River drainage from source ~~to the Wyoming state line and from the Wyoming state line~~ up to and including Jack Creek near Bridger . .B-1

~~(b)~~ (ii) Mainstem of the Clarks Fork of the Yellowstone River from Jack Creek to the Yellowstone River B-2

~~(c)~~ (iii) Tributaries to the Clarks Fork of the Yellowstone River from Jack Creek to the Yellowstone River

except the portion of West Fork of Rock Creek listed in ~~(i)~~ (1)(b)(iii)(A) below. B-1

~~(i)~~ (A) West Fork of Rock Creek drainage to the Red Lodge water supply intake (approximately at latitude 45.1593, longitude -109.2779). A-1

~~(3)~~ (c) Yellowstone River drainage from the Billings water supply intake to the North Dakota state line and including the Big Horn River drainage except the waters listed in ~~(a)-(f)~~ (1)(c)(i) through (ix) below C-3

(a) through (d) remain the same, but are renumbered (i) through (iv).

~~(e)~~ (v) ~~Remainder of the~~ Little Big Horn River drainage below Lodge Grass Creek B-2

~~(f)~~ (vi) Big Horn River mainstem from Williams Coulee to Yellowstone River B-2

~~(4) Yellowstone River drainage from Big Horn River to North Dakota boundary except waters listed in (a) (d) below C-3~~

~~(a) Yellowstone River mainstem from Big Horn River to North Dakota boundary . . . . . .B-3~~

~~(b)~~ (vii) Tongue River (mainstem) from the western crossing of the Wyoming boundary and the Tongue River Reservoir to Prairie Dog ~~Coulee~~ Creek (approximately at latitude 45.2692, longitude -106.6243). B-2

~~(c)~~ (viii) Tongue River mainstem from Prairie Dog ~~Coulee~~ Creek to Yellowstone River B-3

~~(d)~~ (ix) Fox Creek drainage near Sidney B-2

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

17.30.621 A-CLOSED CLASSIFICATION STANDARDS (1) Waters classified A-Closed are to be maintained suitable for drinking, culinary, and food processing purposes after simple disinfection. Water quality is to be maintained suitable for swimming, recreation, growth, and propagation of fishes and associated aquatic life, although access restrictions to protect public health may limit actual use of A-Closed waters for these uses.

(2) through (2)(c) remain the same.

(d) No increase above naturally occurring turbidity is allowed except as permitted in 75-5-318, MCA.

(e) remains the same.

(f) No increases are allowed above naturally occurring concentrations of sediment or suspended sediment (except as permitted in 75-5-318, MCA), settleable solids, oils, or floating solids, which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(g) through (i) remain the same.

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

17.30.622 A-1 CLASSIFICATION STANDARDS (1) Waters classified A-1 are to be maintained suitable for drinking, culinary and food processing purposes after conventional treatment for removal of naturally present impurities.

(2) Water quality must be maintained suitable for bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(3) through (3)(c) remain the same.

(d) No increase above naturally occurring turbidity or suspended sediment is allowed except as permitted in ~~ARM 17.30.637~~ 75-5-318, MCA.

(e) A 1°F maximum increase above naturally occurring water temperature is allowed within the range of 32°F to 66°F; within the naturally occurring range of 66°F to 66.5°F, no discharge is allowed that will cause the water temperature to exceed 67°F; and where the naturally occurring water temperature is 66.5°F or greater, the maximum allowable increase in water temperature is 0.5°F. A 2°F-per-hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55°F~~, and a~~. A 2°F maximum decrease below naturally occurring water temperature is allowed within the range of 55°F to 32°F.

(f) No increases are allowed above naturally occurring concentrations of sediment or suspended sediment (except as permitted in 75-5-318, MCA), settleable solids, oils, or floating solids, which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(g) remains the same.

(h)~~(i)~~ Concentrations of carcinogenic, bioconcentrating, toxic, or harmful parameters that would remain in the water after conventional water treatment may not exceed the applicable standards set forth in department Circular WQB-7.

~~(ii)~~ (i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter ~~12~~ 13 shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards contained in department Circular WQB-7 when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

~~(iii)~~ (j) If site-specific criteria are developed using the procedures given in the Water Quality Standards Handbook Second Edition (US EPA, ~~Dec. 1983~~ September 1993), 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.

(iv) remains the same, but is renumbered (k).

~~(4) The board hereby adopts and incorporates by reference the following:~~

~~(a) department Circular WQB 7, entitled "Montana Numeric Water Quality Standards" (September 1999 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and~~

~~(b) the Water Quality Standards Handbook (US EPA, Dec. 1983) which sets forth procedures for development of site specific criteria.~~

~~(c) Copies of these materials may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

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

17.30.623 B-1 CLASSIFICATION STANDARDS (1) Waters classified B-1 are to be maintained suitable for drinking, culinary and food processing purposes, after conventional treatment; bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(2) through (2)(c) remain the same.

(d) The maximum allowable increase above naturally occurring turbidity is 5 nephelometric turbidity units except as permitted in ~~ARM 17.30.637~~ 75-5-318, MCA.

(e) A 1°F maximum increase above naturally occurring water temperature is allowed within the range of 32°F to 66°F; within the naturally occurring range of 66°F to 66.5°F, no discharge is allowed that will cause the water temperature to exceed 67°F; and where the naturally occurring water temperature is 66.5°F or greater, the maximum allowable increase in water temperature is 0.5°F. A 2°F per-hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55°F~~, and a~~. A 2°F maximum decrease below naturally occurring water temperature is allowed within the range of 55°F to 32°F. This applies to all waters in the state classified B-1 except for Prickly Pear Creek from McClellan Creek to the Montana Highway No. 433 crossing where a 2°F maximum increase above naturally occurring water temperature is allowed within the range of 32°F to 65°F; within the naturally occurring range of 65°F to 66.5°F, no discharge is allowed that will cause the water temperature to exceed 67°F; and where the naturally occurring water temperature is 66.5°F or greater, the maximum allowable increase in water temperature is 0.5°F.

(f) No increases are allowed above naturally occurring concentrations of sediment or suspended sediment (except as permitted in 75-5-318, MCA), settleable solids, oils, or floating solids, which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(g) remains the same.

(h)~~(i)~~ Concentrations of carcinogenic, bioconcentrating, toxic or harmful parameters that would remain in the water after conventional water treatment may not exceed the applicable standards set forth in department Circular WQB-7.

~~(ii)~~ (i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter ~~12~~ 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in department Circular WQB-7 when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

~~(iii)~~ (j) If site-specific criteria are developed using the procedures given in the Water Quality Standards Handbook Second Edition (US EPA, ~~Dec. 1983~~ September 1993), 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.

(iv) remains the same, but is renumbered (k).

~~(3) The board hereby adopts and incorporates by reference the following:~~

~~(a) department Circular WQB 7, entitled "Montana Numeric Water Quality Standards" (September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and~~

~~(b) the Water Quality Standards Handbook (US EPA, Dec. 1983) which sets forth procedures for development of site specific criteria.~~

~~(c) Copies of these materials may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

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

17.30.624 B-2 CLASSIFICATION STANDARDS (1) Waters classified B-2 are to be maintained suitable for drinking, culinary and food processing purposes, after conventional treatment; bathing, swimming and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(2) through (2)(c) remain the same.

(d) The maximum allowable increase above naturally occurring turbidity is 10 nephelometric turbidity units except as permitted in ~~ARM 17.30.637~~ 75-5-318, MCA.

(e) A 1°F maximum increase above naturally occurring water temperature is allowed within the range of 32°F to 66°F; within the naturally occurring range of 66°F to 66.5°F, no discharge is allowed that will cause the water temperature to exceed 67°F; and where the naturally occurring water temperature is 66.5°F or greater, the maximum allowable

increase in water temperature is 0.5°F. A 2°F per-hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55°F~~, and a~~. A 2°F maximum decrease below naturally occurring water temperature is allowed within the range of 55°F to 32°F.

(f) No increases are allowed above naturally occurring concentrations of sediment or suspended sediment (except as permitted in 75-5-318, MCA), settleable solids, oils, or floating solids, which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(g) remains the same.

(h)~~(i)~~ Concentrations of carcinogenic, bioconcentrating, toxic or harmful parameters that would remain in the water after conventional water treatment may not exceed the applicable standards set forth in department Circular WQB-7.

~~(ii)~~ (i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter ~~12~~ 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in department Circular WQB-7 when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

~~(iii)~~ (j) If site-specific criteria are developed using the procedures given in the Water Quality Standards Handbook Second Edition (US EPA, ~~Dec. 1983~~ September 1993), 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.

(iv) remains the same, but is renumbered (k).

~~(3) The board hereby adopts and incorporates by reference the following:~~

~~(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and~~

~~(b) the Water Quality Standards Handbook (US EPA, Dec. 1983) which sets forth procedures for development of site specific criteria.~~

~~(c) Copies of these materials may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

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

17.30.625 B-3 CLASSIFICATION STANDARDS (1) Waters classified B-3 are to be maintained suitable for drinking, culinary and food processing purposes, after conventional treatment; bathing, swimming and recreation; growth and

propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(2) through (2)(c)remains the same.

(d) The maximum allowable increase above naturally occurring turbidity is 10 nephelometric turbidity units except as permitted in ~~ARM 17.30.637~~ 75-5-318, MCA.

(e) A 3°F maximum increase above naturally occurring water temperature is allowed within the range of 32°F to 77°F; within the naturally occurring range of 77°F to 79.5°F, no thermal discharge is allowed that will cause the water temperature to exceed 80°F; and where the naturally occurring water temperature is 79.5°F or greater, the maximum allowable increase in water temperature is 0.5°F. A 2°F per-hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55°F~~, and a~~. A 2°F maximum decrease below naturally occurring water temperature is allowed within the range of 55°F to 32°F.

(i) and (ii) remain the same.

(f) No increases are allowed above naturally occurring concentrations of sediment or suspended sediment (except as permitted in 75-5-318, MCA), settleable solids, oils, or floating solids, ~~that~~ which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(g) remains the same.

(h)~~(i)~~ Concentrations of carcinogenic, bioconcentrating, toxic, or harmful parameters that would remain in the water after conventional water treatment may not exceed the applicable standards set forth in department Circular WQB-7.

~~(ii)~~ (i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter ~~12~~ 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in department Circular WQB-7 when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

~~(iii)~~ (j) If site-specific criteria are developed using the procedures given in the Water Quality Standards Handbook Second Edition (US EPA, ~~Dec. 1983~~ September 1993), 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 specified in department Circular WQB-7.

(iv) remains the same, but is renumbered (k).

~~(3) The board hereby adopts and incorporates by reference the following:~~

~~(a) department Circular WQB 7, entitled "Montana Numeric Water Quality Standards" (September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and~~

~~(b) the Water Quality Standards Handbook (US EPA, Dec. 1983) which sets forth procedures for development of site specific criteria.~~

~~(c) Copies of these materials may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

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

17.30.626 C-1 CLASSIFICATION STANDARDS (1) Waters classified C-1 are to be maintained suitable for bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(2) through (2)(c) remain the same.

(d) The maximum allowable increase above naturally occurring turbidity is 5 nephelometric turbidity units except as permitted in ~~ARM 17.30.637~~ 75-5-318, MCA.

(e) A 1°F maximum increase above naturally occurring water temperature is allowed within the range of 32°F to 66°F; within the naturally occurring range of 66°F to 66.5°F, no discharge is allowed that will cause the water temperature to exceed 67°F; and where the naturally occurring water temperature is 66.5°F or greater, the maximum allowable increase in water temperature is 0.5°F. A 2°F per-hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55°F ~~and a~~. A 2°F maximum decrease below naturally occurring water temperature is allowed within the range of 55°F to 32°F.

(f) No increases are allowed above naturally occurring concentrations of sediment or suspended sediment (except as permitted in 75-5-318, MCA), settleable solids, oils, or floating solids, which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(g) remains the same.

(h)~~(i)~~ Concentrations of carcinogenic, bioconcentrating, toxic, or harmful parameters may not exceed levels that render the waters harmful, detrimental or injurious to public health. Concentrations of toxic parameters also may not exceed the applicable standards specified in department Circular WQB-7.

~~(ii)~~ (i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter ~~12~~ 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in department Circular WQB-7 when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

~~(iii)~~ (j) If site-specific criteria are developed using the procedures given in the Water Quality Standards Handbook Second Edition (US EPA, ~~Dec. 1983~~ September 1993), 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.

(iv) remains the same, but is renumbered (k).

~~(3) The board hereby adopts and incorporates by reference the following:~~

~~(a) department Circular WQB 7, entitled "Montana Numeric Water Quality Standards" (September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and~~

~~(b) the Water Quality Standards Handbook (US EPA, Dec. 1983) which sets forth procedures for development of site specific criteria.~~

~~(c) Copies of these materials may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

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

17.30.627 C-2 CLASSIFICATION STANDARDS (1) Waters classified C-2 are to be maintained suitable for bathing, swimming and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

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

(b) ~~Dissolved oxygen concentration may not be reduced below 7.0 milligrams per liter from October 1 through June 1 nor below 60 milligrams per liter from June 2 through September 30.~~ Dissolved oxygen concentration must not be reduced below the applicable standards given in department Circular WQB-7. These levels apply to all waters in the state classified C-2 except for Ashley Creek below the bridge crossing on airport road where the dissolved oxygen concentrations may not be reduced below 5 mg/l from October 1 through June 1, nor below 3 mg/l from June 2 through September 30.

(c) remains the same.

(d) The maximum allowable increase above naturally occurring turbidity is 10 nephelometric turbidity units except as permitted in ~~ARM 17.30.637~~ 75-5-318, MCA.

(e) A 1°F maximum increase above naturally occurring water temperature is allowed within the range of 32°F to 66°F; within the naturally occurring range of 66°F to 66.5°F, no discharge is allowed that will cause the water temperature to exceed 67°F; and where the naturally occurring water temperature is 66.5°F or greater, the maximum allowable increase in water temperature is 0.5°F. A 2°F per-hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55°F~~, and a~~. A 2°F maximum decrease below naturally occurring water temperature is allowed within the range of 55°F to 32°F.

(f) No increases are allowed above naturally occurring concentrations of sediment or suspended sediment (except as permitted in 75-5-318, MCA), settleable solids, oils, or floating solids, ~~that~~ which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(g) remains the same.

(h)~~(i)~~ Concentrations of carcinogenic, bioconcentrating, toxic, or harmful parameters may not exceed levels that render the waters harmful, detrimental or injurious to public health. Concentrations of toxic parameters also may not exceed the applicable standards specified in department Circular WQB-7.

~~(ii)~~ (i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter ~~12~~ 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in department Circular WQB-7 when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

~~(iii)~~ (j) If site-specific criteria are developed using the procedures given in the Water Quality Standards Handbook Second Edition (US EPA, ~~Dec. 1983~~ September 1993), 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.

(iv) remains the same, but is renumbered (k).

~~(3) The board hereby adopts and incorporates by reference the following:~~

~~(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and~~

~~(b) the Water Quality Standards Handbook (US EPA, Dec. 1983) which sets forth procedures for development of site specific criteria.~~

~~(c) Copies of these materials may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

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

17.30.628 I CLASSIFICATION STANDARDS (1) through (2)(a) remain the same.

(b) ~~Dissolved oxygen concentration must not be reduced below 3.0 milligrams per liter.~~ Dissolved oxygen concentration must not be reduced below the applicable standards given in department Circular WQB-7.

(c) remains the same.

(d) Except as permitted in 75-5-318, MCA, ~~N~~no increase in naturally occurring turbidity is allowed that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(e) remains the same.

(f) No increases are allowed above naturally occurring concentrations of sediment or suspended sediment (except as permitted in 75-5-318, MCA), ~~and~~ settleable solids, oils, or floating solids, which ~~are allowed that~~ will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(g) remains the same.

(h)~~(i)~~ No discharges of toxic, carcinogenic, or harmful parameters may commence or continue that lower, or are likely to lower, the overall water quality of these waters.

~~(ii)~~ (i) As the quality of these waters improves due to control of nonpoint sources, point-source dischargers will be required to improve the quality of their discharges following the MPDES rules (ARM Title 17, chapter 30, subchapter ~~12~~ 13).

~~(iii)~~ (j) Beneficial uses are considered supported when the concentrations of toxic, carcinogenic, or harmful parameters in these waters do not exceed the applicable standards specified in department Circular WQB-7 when stream flows equal or exceed the flows specified in ARM 17.30.635(4) or, alternatively, for aquatic life when site-specific criteria are developed using the procedures given in the Water Quality Standards Handbook Second Edition (US EPA, ~~Dec. 1983~~ September 1993), and provided that other routes of exposure to toxic parameters by aquatic life are addressed. The limits 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.

~~(iv)~~ (k) Limits for toxic, carcinogenic, or harmful parameters in new discharge permits issued pursuant to the MPDES rules (ARM Title 17, chapter 30, subchapter ~~12~~ 13 are the larger of either the applicable standards specified in department Circular WQB-7, site-specific standards, or one-half of the mean in-stream concentrations immediately upstream of the discharge point.

~~(3) The board hereby adopts and incorporates by reference the following:~~

~~(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and~~

~~(b) the Water Quality Standards Handbook (US EPA, Dec. 1983) which sets forth procedures for development of site specific criteria.~~

~~(c) Copies of these materials may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

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

17.30.629 C-3 CLASSIFICATION STANDARDS (1) Waters classified C-3 are to be maintained suitable for bathing, swimming and recreation, and growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers. The quality of these waters is naturally marginal for drinking, culinary and food processing purposes, agriculture and industrial water supply. Degradation that will impact established beneficial uses will not be allowed.

(2) through (2)(c) remain the same.

(d) The maximum allowable increase above naturally occurring turbidity is 10 nephelometric turbidity units, except as permitted in ~~ARM 17.30.637~~ 75-5-318, MCA.

(e) A 3°F maximum increase above naturally occurring water temperature is allowed within the range of 32°F to 77°F; within the range of 77°F to 79.5°F, no thermal discharge is allowed that will cause the water temperature to exceed 80°F; and where the naturally occurring water temperature is 79.5°F or greater, the maximum allowable increase in water temperature is 0.5°F. A 2°F per-hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55°F~~, and a~~. A 2°F maximum decrease below naturally occurring water temperature is allowed within the range of 55°F to 32°F.

(f) No increases are allowed above naturally occurring concentrations of sediment or suspended sediment (except as permitted in 75-5-318, MCA), settleable solids, oils or floating solids, which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(g) remains the same.

(h)~~(i)~~ Concentrations of carcinogenic, bioconcentrating, toxic, or harmful parameters that would remain in the water after conventional water treatment may not exceed the applicable standards set forth in department Circular WQB-7.

~~(ii)~~ (i) Dischargers issued permits under ARM Title 17, chapter 30, subchapter ~~12~~ 13, shall conform with ARM Title 17, chapter 30, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed the applicable standards specified in department Circular WQB-7 when stream flows equal or exceed the design flows specified in ARM 17.30.635(4).

~~(iii)~~ (j) If site-specific criteria are developed using the procedures given in the Water Quality Standards Handbook Second Edition (US EPA, ~~Dec. 1983~~ September 1993), 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 specified in department Circular WQB-7.

(iv) will remain the same, but will be renumbered (k).

~~(3) The board hereby adopts and incorporates by reference the following:~~

~~(a) department Circular WQB 7, entitled "Montana Numeric Water Quality Standards" (September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and~~

~~(b) the Water Quality Standards Handbook (US EPA, Dec. 1983) which sets forth procedures for development of site specific criteria.~~

~~(c) Copies of these materials may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

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

17.30.635 GENERAL TREATMENT STANDARDS (1) The degree of waste treatment required to restore and maintain the quality of surface waters ~~to the standards~~ shall be based on the surface water quality standards and the following:

(a) through (f) remain the same.

(2) Sewage must receive a minimum of secondary treatment as defined by EPA in accordance with requirements set forth in the Federal Water Pollution Control Act, 33 USC~~, et seq., (Supp. 1973) as amended,~~ Sections 1251 through 1387 and 40 CFR Part 133 (July 1, 1991) ~~and subsequent amendments~~. Copies of 40 CFR Part 133 ~~and subsequent amendments~~ may be obtained from the department.

(3) Industrial waste must receive, as a minimum, treatment equivalent to the best practicable control technology currently available (BPCTCA) as defined in 40 CFR Chapter I, Subchapter N (July 1, 1991) ~~and subsequent amendments~~. Copies of 40 CFR Subchapter N ~~and subsequent amendments~~ may be obtained from the department. ~~In cases where BPCTCA is not defined by EPA, industrial waste must receive a minimum of secondary treatment or equivalent as determined by the department.~~

(4) and (5) remain the same.

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

17.30.641 SAMPLING METHODS (1) Water quality monitoring, including ~~M~~methods of sample collection, preservation and analysis used to determine compliance with the standards must be in accordance with 40 CFR Part 136 (July 2000) or other method allowed by the department. ~~the latest edition of Standard Methods for the Examination of Water and Wastewater published by the American public health association~~

~~or in accordance with tests or procedures that have been found to be equally or more applicable by EPA as set forth in 40 CFR 136 and subsequent amendments.~~

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

17.30.645 RADIOLOGICAL CRITERIA (1) No person may cause radioactive materials in surface waters to exceed the standards specified in department Circular WQB-7.

~~(2) The board hereby adopts and incorporates by reference department Circular WQB 7, entitled "Montana Numeric Water Quality Standards" (December, 1995 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, and harmful parameters in water. Copies of the circular may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

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

17.30.646 BIOASSAYS (1) Bioassay tolerance concentrations must be determined using the latest available research results for the materials, by bioassay tests procedures for simulating actual stream conditions as set forth in 40 CFR Part 136 (July 1, 1991). ~~the latest edition of Standard Methods for the Examination of Water and Wastewater published by the American public health association, ASTM Standards Part 31, or in accordance with tests or analytical procedures that are found to be equal or more applicable by EPA.~~ Any bioassay studies made must be made using a representative sensitive local species and life stages of economic or ecological importance~~; provided~~ , except that other species whose relative sensitivity is known may be used when there is difficulty in providing the more sensitive species in sufficient numbers or when such species are unsatisfactory for routine confined bioassays. All bioassay methods and species selections must be approved by the department.

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

17.30.702 DEFINITIONS Unless the context clearly states otherwise, the following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "degradation", "existing uses", "high quality waters", and "parameter."):

(1) through (23) remain the same.

(24)~~(a)~~ The board hereby adopts and incorporates by reference:

~~(i)~~ (a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~September 1999~~ December 2001 edition), which establishes ~~limits~~ water quality standards for

toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters ~~in water~~; and

(ii) and (b) remain the same, but are renumbered (b) and (c).

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, MCA

17.30.715 CRITERIA FOR DETERMINING NONSIGNIFICANT CHANGES IN WATER QUALITY (1) through (3) remain the same.

(4) The board hereby adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December 2001 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, MCA

17.30.1001 DEFINITIONS For the purpose of this subchapter, the following definitions, in addition to those in 75-5-103, MCA, will apply:

(1) through (14) remain the same.

(15) "WQB-7" means department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~September 1999~~ December 2001 edition), which establishes ~~limits~~ water quality standards for toxic, carcinogenic, radioactive, bioconcentrating, nutrient, and harmful parameters ~~in water~~.

(16) The board hereby adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December 2001 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

AUTH: 75-5-301, 75-5-401, MCA
IMP: 75-5-301, 75-5-401, MCA

17.30.1006 CLASSIFICATIONS, BENEFICIAL USES AND SPECIFIC STANDARDS FOR GROUNDWATERS

(1) through (6) remain the same.

(7) The board hereby adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December 2001 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

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

17.30.1007 SAMPLE COLLECTION, PRESERVATION, AND ANALYSIS METHODS (1) and (2) remain the same.

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

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards", ~~November 1998~~ December 2001 edition;

(b) through (4) remain the same.

AUTH: 75-5-301, 75-5-401, MCA
IMP: 75-5-301, 75-5-401, MCA

REASON: Revisions to WQB-7: The Board is proposing the adoption of New Rule I and the amendment of ARM 17.30.502, 17.30.602, 17.30.607 through 17.30.611, 17.30.621 through 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 to consolidate and update the incorporations by reference of the Department of Environmental Quality (Department) Circular WQB-7 (WQB-7), which contains Montana's numeric water quality standards.

The Board is proposing to revise WQB-7 in order to correct the water quality standards for 64 parameters listed in that document. The Board is proposing these modifications in response to the Environmental Protection Agency's (EPA's) review of Montana's latest revision of its numeric water quality standards (otherwise referred to as "criteria"), which were submitted to EPA for its approval in February 2000. EPA has notified the Department that 62 of the criteria currently listed in WQB-7 appear to be in error, because they are either more or less stringent than required by the federal Clean Water Act (CWA) or contain a health risk level that is inconsistent with the requirements of Montana's Water Quality Act. In addition, since EPA last approved Montana's numeric criteria in 1999, EPA has promulgated new criteria for ammonia and cadmium. As a result, the criteria previously adopted by the Board for those parameters are not consistent with the CWA. In order to be consistent with both the CWA and Montana's Water Quality Act, the Board is proposing to revise the criteria for 64 parameters.

If the Board does not correct the criteria that are less stringent than required by the CWA, EPA will be required to disapprove those criteria and promulgate replacement water quality standards for the State. Although the Board could refuse to correct the inadequate standards, the Board has rejected this alternative because EPA action would eventually supercede any criteria that do not meet the requirements of the CWA. Moreover, the Board's refusal to correct the inadequate standards would not be consistent with state policy to maintain primary control over its water quality standards program.

For those criteria in WQB-7 that are currently more stringent than required by the CWA, the Board could choose not to change the criteria without threat of EPA's disapproval. The Board acknowledges, however, that at the time the more stringent criteria were adopted, the Board was not aware that the criteria were more stringent than recommended by EPA.

Since the Board did not make the findings required under §§75-5-203 and 75-5-209, MCA, prior to adopting criteria that are more stringent than comparable federal regulations and guidelines, the Board rejects the option of leaving the more stringent criteria in place. Instead, the Board chooses to modify the criteria to be no more stringent than EPA's recommended criteria.

The Board is also proposing to modify WQB-7 by adopting criteria for two new parameters. One of the parameters is an agricultural chemical, tralkoxydim (Achieve), which has been detected in state waters by the Montana Department of Agriculture. Pursuant to §§80-15-201(3) and 80-15-203(2)(a), MCA, the Board is required to adopt an interim standard for ground water when there is no federally promulgated or published standard for an agricultural chemical that has been detected in Montana's ground water. The Department, in conjunction with EPA, has developed an interim standard for tralkoxydim and its metabolites. The Board is proposing to adopt the interim standard for tralkoxydim for both surface and ground water. The Board could choose to adopt only a ground water standard and meet the requirements of state law, but rejects that alternative as inconsistent with the policy of the State to "protect and maintain" all state waters, both surface and ground water. By adopting a standard for surface waters as well as ground water, Montana's surface waters will receive the same protection as ground water whenever state law requires the adoption of a ground water standard for an agricultural chemical.

The other parameter being added to WQB-7 is Tributyltin (TBT). After EPA approved WQB-7 in January 1999, EPA promulgated aquatic life criteria for TBT in a publication entitled the National Recommended Water Quality Criteria-Correction (EPA 822-Z-99-001 April 1999). EPA is now recommending that states adopt aquatic life criteria for TBT during the states' tri-annual review of water quality standards required by the CWA. If the Board refuses to adopt EPA's recommended criteria for TBT, EPA may choose to promulgate a new water quality standard for the State under the authority of §303(c)(4)(B) of the CWA. The Board rejects this alternative as contrary to the State's primary responsibility over the establishment of water quality standards under the CWA.

Tri-annual review and revisions of Montana's Surface Water Quality Standards (ARM 17.30.601 through 17.30.646), including re-classifying certain parameters in WQB-7: Both the CWA and Montana's Water Quality Act require the Board to review and, if appropriate, revise the State's water quality standards and stream classifications. In recognition of this duty, the Board requested that the Department undertake a comprehensive review of Montana's rules establishing water quality standards. Based upon the Department's review and recommendations, the Board is proposing a number of revisions to Montana's surface water quality standards contained in ARM

17.30.601 through 17.30.646 and changes in classifications for certain parameters listed in WQB-7.

In NEW RULE I, the Board is proposing to update certain incorporations by reference and consolidate into one rule all of the various federal regulations currently incorporated by reference throughout Montana's surface water quality standards. NEW RULE I also updates and incorporates by reference the latest version of the EPA's "Water Quality Standards Handbook." The proposal to update some of the existing incorporations by reference is necessary in order to adopt by reference EPA's current rules and guidance concerning the development of water quality criteria, including water quality monitoring. Since the Department relies on the expertise and research of EPA concerning water quality standards issues, the alternative not to update these references is not a wise use of resources. The Department lacks the resources and funding to conduct the studies that would be necessary to remain consistent with EPA's revised rules and guidance on water quality issues.

The Board is also amending ARM 17.30.621 through 17.30.629 in order to clarify that the beneficial uses for each stream classification are part of the state's water quality standards and subject to the enforcement authority of the Department. The current language implies that the designated uses of waters are in fact presently being attained. For example, ARM 17.30.622 states that: "Waters classified A-1 are suitable for...". The proposed language emphasizes that the waters "are to be maintained" suitable for all of their designated uses, even if those uses are not presently being attained. This modification is necessary to clarify the Department's authority to either require restoration or assist with voluntary efforts to restore any designated use that is not currently being maintained. The alternative not to modify the current language may result in confusion, because the current language does not accurately describe the Department's authority to enforce the requirement to maintain a stream's beneficial uses as part of the water quality standards.

Other modifications to Montana's surface water quality standards are being proposed that would: (1) describe, by longitude and latitude, certain stream reaches included in ARM 17.30.607 through 17.30.611; (2) clarify that exceedences of the turbidity and sediment requirements in ARM 17.30.621 through 17.30.629 cannot occur unless authorized under §75-5-318, MCA; and (3) modify the definitions for "conventional water treatment," "mixing zone," "pollutants," and the description of WQB-7.

The Board is proposing to describe, by longitude and latitude, certain stream reaches in Montana's stream classification system to more accurately describe where those stream segments fit within the classification system. The alternative not to add the proposed language may result in confusion concerning the appropriate classification of these stream reaches.

The Board is proposing to clarify that exceedences of turbidity and sediment standards may only occur under the Department's authority to waive such standards in §75-5-318, MCA. The current rules contain references to a portion of a rule that was repealed after the Montana Legislature enacted a law in 1999 (now codified in §75-5-318, MCA), which specified new requirements and procedures governing the Department's waiver of the State's turbidity and sediment standards. The alternative not to clarify that the new law applies to the Department's waiver of turbidity and sediment standards would create confusion concerning the correct procedures and requirements for obtaining a waiver.

The Board is proposing to modify the language describing WQB-7, which is incorporated by reference throughout the surface water quality standards. The Board is proposing to add the term "radioactive" to the list of terms describing the characteristics of the parameters in WQB-7. This change is being proposed to clarify that some of the water quality standards in WQB-7 apply to parameters that are radioactive. The alternative not to add the term would result in an incomplete description of the parameters for which the Board has adopted water quality standards.

The definition of "conventional water treatment" is being modified to delete reference to "chlorination" and to replace that term with "disinfection." This modification clarifies that other methods of disinfection aside from chlorination are acceptable methods of treating water. The Board is also proposing to modify the term "mixing zone" to delete reference to the Department's mixing zone guidance and to replace those terms with a reference to the Board's mixing zone rules. The definition of "pollutants" is being modified to update the statutory references to the various definitions of "wastes" that are used to define "pollutants." These changes are necessary to clarify and update the definitions used in the State's water quality standards.

5. 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, no later than November 12, 2001. To be guaranteed consideration, the comments must be postmarked on or before that date.

6. Katherine Orr, attorney for the Board, has been designated to preside over and conduct the hearing.

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

public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA, underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, or may be made by completing a request form at any rules hearing held by the Board.

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

BOARD OF ENVIRONMENTAL REVIEW

BY: *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 October 1, 2001.

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

In the matter of the amendment of ARM 17.20.1607 and the repeal of ARM 17.20.1608, and 17.20.1701 through 17.20.1706 pertaining to centerline approval for linear facilities	NOTICE OF PROPOSED AMENDMENT AND REPEAL (MAJOR FACILITY SITING) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 16, 2001, the Board of Environmental Review proposes to amend and repeal the above-stated rules pertaining to centerline approval for linear facilities.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., October 29, 2001, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

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

17.20.1607 LINEAR FACILITIES, MINIMUM IMPACT STANDARD

(1) In order for the board to find and determine that a linear facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives as required by 75-20-301~~(2)~~(1)(c), MCA:

~~(1)~~ (a) The board finds and determines:

~~(a)~~ (i) that the expected net present value of costs, including monetary costs of construction to the applicant, external monetary costs, and the value of reasonably quantifiable environmental impacts is lower for the proposed facility than for any other available alternative that would meet the need finding required by ARM 17.20.1606(1). Other available alternatives include transmission alternatives, alternative energy resources and energy conservation, alternative transmission technologies, alternative levels of transmission reliability and the no action alternative;

~~(b)~~ (ii) that unquantified environmental impacts are not significantly adverse to alter the finding required by (1)(a)(i) above;

~~(c)~~ (iii) that all mitigation measures included in the mitigation plan in (1)(g)(vii) below have been incorporated in the cost finding required by (1)(a)(i) above;

~~(d)~~ (iv) that the route for the facility achieves the best balance among the preferred route criteria listed in ARM 17.20.1427 considering environmental impact and economic cost;

~~(e)~~ (v) that the route for the facility will not cross one of the board's designated exclusion areas listed in ARM 17.20.1428;

~~(f)~~ (vi) that reasonable alternative locations for the facility were considered in selecting the route, pursuant to ARM 17.20.1431, 17.20.1436, and 17.20.1439;

~~(g)~~ (vii) that the route for the facility will result in less cumulative adverse environmental impact and economic cost than siting the facility on any reasonable alternative ~~route~~ location, based on the following:

~~(i)~~ (A) identification of any probable significant adverse environmental impacts;

~~(ii)~~ (B) identification of reasonable mitigation for these significant adverse environmental impacts;

~~(iii)~~ (C) adoption of an acceptable mitigation plan based on the measures identified in ~~(ii)~~ (1)(a)(vii)(B) above, including environmental specifications, that will be included in conditions to the certificate; and

~~(iv)~~ (D) adoption of an acceptable monitoring plan, including a reclamation plan, that will be included in conditions to the certificate.

~~(h)~~ (viii) If in making the finding required by ~~(g)~~ (1)(a)(vii) above, the route for the facility crosses ~~1~~ one or more of the sensitive areas listed in ARM 17.20.1429 or 17.20.1431, or the areas of concern listed in 17.20.1430 or 17.20.1431, either that no significant adverse environmental impacts would result in the area(s); or

~~(i)~~ (A) that any significant adverse environmental impacts affecting the environmental resources, qualities or characteristics for which the sensitive areas or areas of concern are designated have been identified;

~~(ii)~~ (B) that reasonable mitigation for these significant adverse environmental impacts has been identified;

~~(iii)~~ (C) that an acceptable mitigation plan based on the measures identified in ~~(ii)~~ (1)(a)(viii)(B) above, including environmental specifications, has been identified and will be included in conditions to the certificate; and

~~(iv)~~ (D) that an acceptable monitoring plan, including a reclamation plan, has been identified, and will be included in conditions to the certificate.

~~(i) that the route for the facility is of sufficient width to permit the applicant to propose and the board to find and determine an acceptable centerline pursuant to the requirements of subchapter 17 and the findings required by ARM 17.20.1608.~~

(2) The board must condition its approval of a facility on the following standards:

(a) through (g) remain the same.

~~(h) for all linear facilities, that the location of the centerline within the approved route is subject to final approval by the board.~~

~~(i) for all linear facilities, that the applicant shall submit a centerline application pursuant to subchapter 17 within 1 year of the board's granting a certificate.~~

~~(j)~~ (h) for all linear facilities, that any other standards the board deems important will be met.

AUTH: 75-20-105, MCA
IMP: 75-20-301, 75-20-105, MCA

REASON: Throughout this rule references are made to approval of a route followed by approval of a centerline. Section 75-20-205, MCA, which authorized the centerline approval process, was repealed in 1997. The location of a proposed linear facility or associated facility would be addressed in the Department decision on the facility. The change in the statutory citation is necessary because of an amendment to 75-20-301, MCA. Other numbering changes are due to style requirements of the Secretary of State.

4. The Board is proposing to repeal the following rules:

17.20.1608 LINEAR FACILITIES, MINIMUM IMPACT STANDARD FOR CENTERLINES (AUTH: 75-20-105, MCA; IMP, 75-20-301, 75-20-302, MCA), located at page 17-1387, Administrative Rules of Montana.

17.20.1701 CONDITIONAL APPROVAL OF ROUTES OR CORRIDORS (AUTH: 75-20-105, MCA; IMP, 75-20-301, 75-20-302, MCA), located at page 17-1401, Administrative Rules of Montana.

17.20.1702 CENTERLINE EVALUATION IN AN APPROVED ROUTE OR CORRIDOR--GENERAL REQUIREMENTS (AUTH: 75-20-105, MCA; IMP, 75-20-301, 75-20-302, MCA), located at page 17-1402, Administrative Rules of Montana.

17.20.1703 ELECTRIC TRANSMISSION LINES, CENTERLINE EVALUATION IN AN APPROVED ROUTE, INFORMATION REQUIREMENTS (AUTH: 75-20-105, MCA; IMP, 75-20-301, 75-20-302, MCA), located at page 17-1403, Administrative Rules of Montana.

17.20.1704 PIPELINES, CENTERLINE EVALUATION IN AN APPROVED ROUTE, INFORMATION REQUIREMENTS (AUTH: 75-20-105, MCA; IMP, 75-20-301, 75-20-302, MCA), located at page 17-1406, Administrative Rules of Montana.

17.20.1705 LINEAR ASSOCIATED FACILITIES, CENTERLINE EVALUATION IN AN APPROVED CORRIDOR, INFORMATION REQUIREMENTS (AUTH: 75-20-105, MCA; IMP, 75-20-301, 75-20-302, MCA), located at page 17-1406, Administrative Rules of Montana.

17.20.1706 FINAL CENTERLINE APPROVAL (AUTH: 75-20-105, MCA; IMP, 75-20-301, 75-20-302, MCA), located at page 17-1407, Administrative Rules of Montana.

REASON: These rules are proposed for repeal because 75-20-205, MCA, which authorized the centerline approval process, was repealed in 1997. A centerline determination is no longer authorized by statute. The location of a proposed linear facility or associated facility would be addressed in the Department decision on the facility.

5. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than November 8, 2001. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5:00 p.m. November 8, 2001.

6. If persons who are directly affected by the proposed actions wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Board of Environmental Review, P.O. Box 200901, Helena, MT 59620-0901. A written request for hearing must be received no later than November 8, 2001

7. If the Board receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those organizations directly affected has been determined to be 4 based on the number of co-ops, utilities and federal agencies that may build transmission facilities.

8. 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., PO Box 200901, Helena, Montana 59620-0901,

faxed to the office at (406) 444-4386, or may be made by completing a request form at any rules hearing held by the Board.

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 October 1, 2001.

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

In the matter of the adoption of New Rule I pertaining to an air quality fee credit for use of postconsumer glass in recycled material	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULE (AIR QUALITY)

TO: All Concerned Persons

1. On November 8, 2001, at 10:30 a.m., the Department of Environmental Quality will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-captioned rule.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., October 29, 2001, to advise us of the nature of the accommodation that you need. Please contact Robert Martin, Air & Waste Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-4194; fax (406) 444-1499.

3. The proposed new rule provides as follows:

NEW RULE I CREDIT AGAINST AIR PERMITTING FEES FOR CERTAIN USES OF POSTCONSUMER GLASS (1) Sections 75-2-224 through 75-2-227, MCA, provide a credit against the fees imposed under this subchapter for using postconsumer glass in recycled material.

(2) For the purposes of this rule, "postconsumer glass" and "recycled material" mean the same as defined in 75-2-224, MCA.

**AUTH: 75-2-227, MCA
IMP: 75-2-211, 75-2-224 through 75-2-227, MCA**

4. In Chapter 516, Laws of 2001, the Montana Legislature enacted House Bill 499, which requires the Department to provide a credit against air quality fees assessed under section 75-2-220, MCA, for persons who use postconsumer glass in recycled material and who meet certain criteria specified in the bill. The fees assessed by the Department under section 75-2-220, MCA, include air quality permit application fees, annual air quality operation fees, and air quality major open burning permit fees. These fees are assessed under rules in ARM Title 17, chapter 8, subchapter 5.

Section 4 of House Bill 499, which was effective on passage and approval, mandated that: "The department shall adopt rules describing postconsumer glass and recycled material that qualify for the credit authorized by [section

3]." The proposed new rule is intended to meet that requirement. Also, the proposed new rule is necessary to inform persons subject to the air quality fee rules of the availability of the credit and of the eligibility criteria.

New Rule I would advise persons reading the air quality fee rules of the availability of the statutory fee credit and would refer readers to the statutory definitions of the terms "postconsumer glass" and "recycled material." The Department is not proposing any clarification of these terms at this time because the Department does not have any experience with the issue indicating that clarification of these terms is necessary. If experience indicates that clarification of these terms is necessary, the Department will propose amendments at a later date.

The Department does not know the number of persons who might recycle glass, be subject to air quality fees, and meet the criteria of House Bill 499 for claiming the air quality fee credit. Therefore, the Department also does not know the cumulative decrease in air quality fees for all persons affected. However, the Department does not expect the impact to be substantial.

5. 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 David Rusoff, Legal Unit, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901, or submitted electronically via email addressed to "drusoff@state.mt.us", no later than 5:00 p.m. November 15, 2001. To be guaranteed consideration, written comments must be postmarked on or before that date.

6. David Rusoff has been designated to preside over and conduct the hearing.

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

completing a request form at any rules hearing held by the Department.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State October 1, 2001.

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

In the matter of the proposed amendment of ARM 8.10.414, pertaining to prohibition of animals in barbershops, and 8.10.1011, pertaining to certain records of barber schools	) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT))))

TO: All Concerned Persons

1. On November 5, 2001, at 10:00 a.m., a public hearing will be held in the Business Standards Division, Department of Labor and Industry, Conference Room, 2nd Floor, Federal Building, 301 South Park Avenue, Helena, Montana, to consider proposed amendment of the above-captioned rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Barbers no later than 5:00 p.m., on October 29, 2001, to advise us of the nature of the accommodation that you need. Please contact Jeannie Worsech, Board of Barbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2333; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolbar@state.mt.us.

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

8.10.414 GENERAL REQUIREMENTS (1) through (7) Remain the same.

(8) ~~Animals shall not be permitted on the premises at any time except for animals trained to assist individuals with special physical, visual or hearing needs~~. Animals are permitted on the premises only as follows:

(a) Dogs may be permitted on the premises at any time at the discretion of the licensee, after the licensee meets all of the following requirements:

(i) provides the board with proof of current rabies vaccination records for each dog on the premises;

(ii) provides the board with a certificate of insurance for liability insurance covering each dog on the premises; and

(iii) posts a legible sign at or near the entrance of the business indicating that there is a dog present in the facility.

(b) Animals assisting individuals with disabilities must be accommodated as specified in 49-4-214, MCA.

(c) All other animals are not permitted on the premises of the business at any time, unless the licensee has submitted a request for a variance that has been approved by the board in accordance with ARM 8.10.509.

(9) Remains the same.

AUTH: 37-30-203 and 37-30-422, MCA
IMP: 37-30-422, MCA

Reasonable necessity: There is reasonable necessity to amend ARM 8.10.414 at this time to address an issue of apparent substantial public concern in northwestern Montana. The Board is proposing the amendment after considering the comments received on a previously proposed deletion of subsection (8). That previous proposal was published on June 21, 2001, as MAR Notice No. 8-10-18, and appeared in issue number 12 of the 2001 Montana Administrative Register, at page 1018. The Board received several comments orally and in writing from the general public and licensees opposed to deleting the existing subsection prohibiting animals in barbershops. All of the comments in support of repealing the rule addressed only dogs and not other animals. The Board offers the current proposed rule amendment as a compromise approach to changing the current rule. The Board proposes this amendment to allow dogs in the barbershops at the licensee's discretion, under certain circumstances, in order to continue to preserve public health, safety and welfare. This proposed rule amendment also allows licensees who wish to have other types of animals in barbershops to request a waiver of subsection (8) of the rule from the Board.

8.10.1011 SCHOOL REQUIREMENTS (1) To implement the provisions found at 37-30-404 through 37-30-407, MCA, the following rules are necessary:

(a) through (e) Remain the same.

(f) ~~On forms provided by the board, school operators~~ School officials shall maintain a daily attendance record ~~and a monthly total of hours earned~~ for each student ~~and submit such records to the board by the 15th of each following month~~. Attendance records ~~shall~~ must ~~be updated daily and shall~~ be made available for inspection or investigation by the board or the board's agents upon request.

(g) through (n) Remain the same.

AUTH: 37-1-131 and 37-30-203, MCA
IMP: 37-30-403, 37-30-404, 37-30-405, 37-30-406 and 37-30-407, MCA

Reasonable necessity: There is reasonable necessity for the Board to propose the amendment of ARM 8.10.1011 in response to a recent request from the University of Montana College of Technology in Missoula to repeal certain reporting duties which the College of Technology believes are unduly burdensome. The Board agrees that as long as the attendance records are available for inspection by the Board or its agents, or will be made available by a school during a Board investigation, the public's health, safety and welfare are adequately protected and the education and licensing process will be streamlined.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of

Barbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolbar@state.mt.us and must be received no later than 5:00 p.m. on November 9, 2001. If comments are submitted in writing, the Board requests that the person submit six copies of their comments.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.discoveringmontana.com/dli/bsd/license/bsd_boards/bar_board/rule_page.htm, in the Rules Notices 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, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

6. The Board of Barbers maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this Board. 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 all Board of Barbers administrative rule-making proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Barbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to compolbar@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF BARBERS
DELORES LUND, Chairman

/s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

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

Certified to the Secretary of State: October 1, 2001.

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

In the matter of the adoption of New Rule I pertaining to the licensure of minimum standards for critical access hospital (CAH)	)))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 10, 2001, the Department of Public Health and Human Services proposes to adopt the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on October 18, 2001, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

RULE I MINIMUM STANDARDS FOR A CRITICAL ACCESS HOSPITAL (CAH) (1) A critical access hospital shall comply with the conditions of participation for critical access hospitals as set forth in 42 CFR 485 Subpart F. A copy of the cited rules is available at the department.

(2) A facility qualifies as a necessary provider of health care services to residents of the area where the facility is located if the facility is either located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(3) 24 hour emergency care provided by a facility is necessary for ensuring access to emergency care services in the area served by the facility if the 24 hour emergency care provided by the facility satisfies the requirements for emergency services for Medical Assistance Facilities set forth in ARM 16.32.399G, including compliance with the rules governing emergency medical services, subchapters 2, 3, and 4 of ARM Title 16, chapter 30.

(4) The Department hereby adopts and incorporates by reference ARM 16.32.399G(1)(a), (b), (c) and (d) and subchapters 2, 3 and 4 of ARM Title 16, chapter 30. A copy of the cited rules is available at the department's licensure bureau.

AUTH: Sec. 50-5-233, MCA
IMP: Sec. 50-5-233, MCA

3. Senate Bill 194, enacted by the 2001 Legislature, grants to the Department of Public Health and Human Services the authority to designate a facility as a critical access hospital, and directs the Department to adopt rules to implement the requirements of Senate Bill 194, including, but not limited to:

a. standards for determining whether a facility qualifies as a necessary provider;

b. standards for determining whether 24-hour emergency care provided by a facility is necessary to ensure that the area served by the facility has adequate access to emergency care services.

Furthermore, 42 CFR 485, Subpart F, sets forth the minimum requirements a facility must meet in order for the Department to designate it as a critical access hospital.

Therefore, in order for the Department to satisfy the legislative mandate of SB194, and in order to conform State law to federal regulations setting forth the minimum requirements of Department designation of critical access hospitals, it is necessary and required that the Department adopt rules setting forth the minimum requirements a facility must meet in order to be designated as a critical access hospital, including the requirements set forth in 42 CFR 485, Subpart F, and including the standards and definitions to be applied in determining whether a facility qualifies as a necessary provider, and whether the area served by the facility has adequate access to emergency care services.

The proposed rule will satisfy the legislative mandates of SB194, enacted by the 2001 Legislature, and will conform State law to the requirements of federal regulations by stating the minimum requirements a facility must meet in order to be designated as a critical access hospital by the Department of Public Health and Human Services, including the standards which the Department will apply in determining whether a facility is a necessary provider, and the standards which the Department will apply in determining whether emergency services provided by a facility are necessary to ensure that the area served by the facility has adequate access to emergency services.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on November 8, 2001. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on November 8, 2001.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 2 based on the 19 hospitals affected by rules covering minimum standards for critical access hospital (CAH).

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State October 1, 2001.

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

In the matter of the transfer and amendment of ARM 16.32.302 pertaining to health care licensure	)	NOTICE OF PROPOSED TRANSFER AND AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 10, 2001, the Department of Public Health and Human Services proposes to transfer and amend the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on October 18, 2001, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rule as proposed to be transferred and amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

16.32.302 [37.106.302] MINIMUM STANDARDS OF CONSTRUCTION FOR A LICENSED HEALTH CARE FACILITY: ADDITION, ALTERATION, OR NEW CONSTRUCTION: GENERAL REQUIREMENTS (1) Except as may otherwise be provided in (2) of this rule, a health care facility and the construction of, alteration, or addition to a facility shall comply with:

(a) all standards set forth in:

(i) the ~~1996 through 1997~~ 2001 Guidelines for Design and Construction of Hospitals and Health Care Facilities and NFPA 101, "Life Safety Code", 2000 edition, except that a facility already licensed under an earlier edition of the "Life Safety Code" published by the national fire protection association, is not required to comply with later editions of the "Life Safety Code". Copies of the cited editions are available at the Department of Public Health and Human Services, Quality Assurance Division, Licensing Bureau, P.O. Box 202953, Helena, Montana, 59620-2953.

(ii) through (3) remain the same.

(4) The department hereby adopts and incorporates by reference:

(a) The ~~1996-1997~~ 2001 Guidelines for Design and Construction of Hospital and Health Care Facilities which set forth minimum construction and equipment requirements deemed necessary by the state department of public health and human

services to ensure health care facilities can be efficiently maintained and operated to furnish adequate ~~facilities~~ care.

(b) through (f) remain the same.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103, 50-5-201 and 50-5-204, MCA

3. The proposed amendment to ARM 16.32.302 is to replace the 1996-1997 edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities, which is currently incorporated into ARM 16.32.302 by reference, with the 2001 edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities. It is necessary and desirable to adopt and incorporate the 2001 edition of the Guidelines because the 1996-1997 edition is out of date, in that it does not reflect up to date standards for reviewing health care construction for licensure, does not address standards for adult day care and assisted living facilities, does not address standards for hospice care, and does not address the current requirements for outpatient surgical facilities, infection control, or air balance and filtration requirements. Furthermore, the 2001 edition of the Guidelines contains more than 1,500 revisions to the 1996-1997 edition, including the specific areas addressed above, and is the most current and comprehensive guideline regarding the inspection of hospital and health care facility construction.

Alternative options to the adoption of the 2001 edition of the Guidelines are to retain the outdated 1996-1997 edition, or to draft a comprehensive set of standards of construction for licensed health care facilities. It is not a viable option to retain the 1996-1997 edition of the Guidelines for the reasons addressed above, and incorporation of the 2001 edition of the Guidelines is preferable to drafting a comprehensive set of standards of construction for licensed health care facilities because the 2001 edition of the Guidelines is already written, and already contains the most current and comprehensive guideline regarding the inspection of hospital and health care facility construction.

Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the health care licensure was transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services. In order to implement that legislation, the rules are being transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 106.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on November 8, 2001. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by

electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on November 8, 2001.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 18 recipients of health care facility licenses based on the 180 licensed health care facilities affected by this proposed rule change.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State October 1, 2001.

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

In the matter of the adoption of new Rules I through X; the 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	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, TRANSFER AND AMENDMENT AND REPEAL

TO: All Interested Persons

1. On October 31, 2001, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, transfer, amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing. If you need to request an accommodation, contact the department no later than 5:00 p.m. on October 18, 2001, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

RULE I MENTAL HEALTH CENTER: MEDICATION MANAGEMENT SERVICES (1) Each mental health center shall make medication management services available to the clients it serves for medications needed to treat their mental illnesses.

(2) Medication management services shall be provided by licensed health care professionals, acting within the scope of their licenses, who are either employed by or contracted with the mental health center.

(3) A mental health center shall have a medication management policy and procedure manual that must include, at a

minimum, policies and procedures regarding:

(a) maintaining a current copy of the licensed health care professional's order for medication in the client's file;

(b) self-administration of medications by clients;

(c) administering and monitoring client prescription and over-the-counter medications by licensed health care professionals;

(d) adjusting dosages or prescribing new medications for clients to include the rationale for the use of and changes in the client's medication;

(e) monitoring the client's response to medication or dosage changes;

(f) maintaining a medication administration record for each client documenting medications and dosages prescribed, the client's compliance in taking prescribed medications, doses taken or not taken, any measure taken to obtain compliance, and the reason for omission of any scheduled dose of medication;

(g) documenting any medication errors;

(h) reporting and addressing in a timely manner, any medication errors and adverse drug reactions;

(i) providing and documenting education about the effects, side effects, contraindications and management procedures of the client's medication;

(j) providing safe and secure storage of all medications;

(k) providing refrigeration for medication segregated from food items, within the temperature range specified by the manufacturer for medication that requires refrigeration; and

(l) storing medication in the container dispensed by the pharmacy or in the container in which it was purchased in the case of over-the-counter medication, with the label intact and clearly legible.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

RULE II MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES (1) In addition to the requirements established in this subchapter, each mental health center providing foster care for mentally ill adults shall utilize only foster care providers licensed by the department pursuant to ARM Title 37, chapter 100, subchapter 1.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

RULE III MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, POLICY AND PROCEDURES (1) Each mental health center that has a foster care program endorsement shall have policy and procedures in place to make initial and periodic assessment of an applicant's ability to meet the following criteria:

(a) ability to provide necessary services and supports to the client; and

(b) ability to support the client's rights as outlined in

53-21-142, MCA.

(2) The mental health center shall provide an orientation session prior to the foster care applicant's licensure, and at least annually on issues that at minimum address the following:

(a) the types of mental illnesses, etiology of mental illnesses, treatment approaches and recovery from mental illnesses;

(b) community resources and available mental health center services;

(c) therapeutic communications;

(d) program policies and procedures, including emergency procedures;

(e) legal responsibilities of mental health service providers and client rights;

(f) infection control and prevention of transmission of blood borne pathogens; and

(g) cardiopulmonary resuscitation and Heimlich maneuver.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

RULE IV MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, RECORDS (1) For each foster care provider, the mental health center shall maintain the following information on file:

(a) initial and annual assessments of the provider's ability to provide necessary services and supports to the client and ability to support the client's rights as outlined in 53-21-142, MCA; and

(b) documentation of the orientation session prior to the provider's licensure, and annually thereafter.

(2) For each client, the mental health center shall maintain the following information on file:

(a) the mental health center's individual placement agreement with each client which sets forth the terms of the client's placement and the responsibilities of the foster care provider, the mental health center, the client, and when appropriate the guardian as defined in ARM 16.32.602 [37.106.1902]; and

(b) documentation that the client has received an assessment to ensure the appropriateness of foster care services in meeting the client's needs as provided in [Rule VII].

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

RULE V MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, STAFF SUPERVISION AND TRAINING (1) A mental health center providing foster care shall employ a program supervisor who is experienced in providing services to individuals with mental illnesses. The program supervisor shall supervise all foster care specialists and ensure the program complies with the requirements of this subchapter. The program supervisor may perform the duties of an adult foster care

specialist if the mental health center has not more than 10 adult foster care clients.

(2) A mental health center providing foster care shall train the program supervisor and adult foster care specialists in the therapeutic de-escalation of crisis situations. The training must include the use of physical and non-physical methods of managing clients and must be updated, at least annually.

(3) The mental health center shall provide periodic training to reinforce and update the initial training outlined in this rule.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

RULE VI MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, ADULT FOSTER CARE SPECIALIST (1) A mental health center providing foster care shall employ or contract with at least one adult foster care specialist.

(2) The adult foster care specialist shall have the knowledge and skills needed to effectively perform foster care specialist duties. Minimum qualifications for a foster care specialist are a bachelor's degree in a human services field with 1 year of full time experience serving people with mental illnesses. Individuals with other educational backgrounds who, as providers, consumers or advocates of mental health services have developed the necessary skills, may also be employed as foster care specialists. The mental health center's foster care specialists position description may contain equivalency provisions.

(3) The adult foster care specialist shall:

(a) implement and coordinate mental health services to clients;

(b) carry a case load of not more than 12 foster care clients;

(c) meet with the foster care provider at least quarterly to assess, at a minimum, the following:

(i) the provider's ability to continue to meet the needs of the client as determined by the treatment plan; and

(ii) whether supports for the foster care provider are adequate; and

(d) document each contact with the foster care provider, regarding client's treatment in the client's case file.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

RULE VII MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, CLIENT ADMISSION CRITERIA AND NEEDS ASSESSMENT (1) A mental health center providing foster care shall establish admission criteria which assesses the client's needs and the appropriateness of foster care services to meet those needs. At a minimum, the admission criteria must require that a client:

(a) be 18 years of age or older;
(b) be unable to maintain the stability of their mental illness in an independent living situation;
(c) be diagnosed with a severe disabling mental illness;
(d) be medically stable;
(e) not be an immediate danger to self or others; and
(f) be able to take medications when prompted.
(2) A mental health center providing foster care shall assess the needs of each newly-admitted client in the following areas:
(a) the client's ability to appropriately use community resources to access professional services, and to obtain services from public agencies;
(b) the client's personal care skills;
(c) the client's ability to socialize and participate in recreation and leisure activities; and
(d) the likelihood the client will benefit from adult foster care.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

RULE VIII MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, TREATMENT PLAN (1) A mental health center providing foster care shall implement a treatment plan for each client that:
(a) structures rehabilitation and treatment activities to promote increasing levels of independence;
(b) articulates a detailed crisis plan; and
(c) articulates arrangements for the client's discharge from the foster care home in the following areas:
(i) housing;
(ii) employment;
(iii) education and training;
(iv) treatment; and
(v) any other services needed for independent living.
(2) A mental health center providing foster care shall maintain progress notes for each client. The progress notes must be entered into the client's clinical record at least every 30 days, and upon the occurrence of any significant change in the client's condition.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

RULE IX MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, CLIENT PLACEMENT AGREEMENTS (1) The mental health center shall enter into an individual placement agreement which sets forth the terms of the client's placement, the responsibilities of the foster care provider, the mental health center, the client, and when appropriate, the guardian.
(2) The placement agreement must be signed with copies dispersed to all parties who are a part of the agreement.
(3) The placement agreement shall be reviewed quarterly by

all parties who are part of the agreement to determine the need for any amendments to the agreement.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

RULE X MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, CLIENT RIGHTS AND RESPONSIBILITIES (1) Upon admission a mental health center providing foster care shall provide each client with:

(a) a written statement of the client's rights which, at a minimum, include the rights found in 53-21-142, MCA;

(b) a copy of the mental health center grievance procedure; and

(c) written rules of conduct for the foster care home and the consequences to the client for violating the rules.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

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

16.32.602 [37.106.1902] MENTAL HEALTH CENTER: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) "Administrator" means a designated individual having daily overall management responsibility for the operation of a mental health center.

(2) "Adult day treatment ~~program~~" means a program which provides a variety of mental health services to adults with ~~a~~ mental ~~illness~~ illnesses.

(3) "Chemical dependency treatment" means:

(a) referral of a mental health center client with chemical dependency to a certified chemical dependency counselor or state approved chemical dependency treatment program;

(b) assessment of a mental health center client for chemical dependency by a certified chemical dependency counselor; and

(c) integration and coordination of chemical dependency treatment and mental illness treatment for mental health center clients who have co-occurring chemical dependency and mental illness.

~~(3)~~ (4) "Child and adolescent" means a person 17 years of age or younger.

~~(4)~~ (5) "Child and adolescent day treatment ~~program~~" means a program which provides an integrated set of mental health, education and family intervention services to children or adolescents with a ~~severe~~ serious emotional disturbance.

~~(5)~~ (6) "Client" means an adult, child or adolescent, or resident receiving services from a mental health center.

(7) "Community-based psychiatric rehabilitation and support" means the definition as defined in ARM 37.88.901.

~~(6)~~ (8) "Community residential facility" means the definition provided in 76-2-411, MCA.

~~(7)~~ (9) "Crisis ~~intervention~~ stabilization ~~facility~~ program" means ~~a facility which provides short-term~~ 24 hour supervised ~~housing~~ treatment for adults with a mental illness experiencing a crisis. The length of stay is limited to stabilizing the individual's symptoms.

~~(8)~~ (10) "Crisis telephone services" means ~~a~~ 24 hour ~~emergency mental health~~ telephone ~~service~~ response to mental health emergencies that is available and publicized to a community.

(11) "Guardian" means a person appointed by a court to make medical, and possibly financial, decisions as provided in Title 72, chapter 5, MCA.

~~(9)~~ (12) "Individualized education program" means a written plan developed and implemented for each student with a disability in accordance with 34 CFR 300.341 through 300.350 as revised as of July 1, 1995. The department hereby adopts and incorporates by reference 34 CFR 300.341 through 300.350. A copy of the regulations may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, Licensing Bureau, ~~Cogswell Building,~~ P.O. Box ~~202951~~ 202953, Helena, Montana 59620-~~2951~~ 2953.

~~(10)~~ (13) "Individualized treatment plan" means a written plan that outlines individualized treatment activities for maximum reduction of mental disability and restoration of the client's ability to function adequately in the family, at work or school, and as a member of the community.

(14) "In-training practitioner services" means the definition as defined in ARM 37.88.901.

~~(11)~~ (15) "Intensive case management" means the activities of a single person or team that assists individuals with mental illness to make informed choices for community services which seek to maximize their personal abilities and enable growth in some or all aspects of the individual's vocational, social, and health related environments.

(16) "Licensed health care professional" means a licensed physician, physician assistant-certified, or advanced practice registered nurse who is authorized to prescribe medication within the scope of the license.

~~(12)~~ (17) "Licensed mental health professional" means:

(a) a physician, clinical psychologist, social worker, or professional counselor ~~or registered nurse~~ licensed to practice in Montana; ~~or~~

(b) an occupational therapist licensed to practice in Montana working in a child and adolescent day treatment program or adult day treatment program~~.~~ ; or

(c) a registered nurse who has had at least 3 years experience dedicated substantially to serving persons with serious mental illnesses and is licensed to practice in Montana.

~~(13)~~ (18) "Medical director" means a physician licensed by the Montana board of medical examiners who oversees the mental health center's clinical services and who has:

(a) at least a 3-year residency in psychiatry; or

(b) at least 3 years' post-graduate psychiatric training in a program approved by the counsel on medical evaluation of the American medical association; or

(c) at least 3 years of experience in a medical practice dedicated substantially to serving persons with serious mental illnesses.

~~(14)~~ (19) "Mental health group home" means a community residential facility ~~which provides housing and rehabilitation services to adults with a mental illness to learn, maintain or enhance community living skills~~ as defined in ARM 37.88.901.

~~(15)~~ (20) "Mental illness" means that condition of an individual in which there is either psychological, physiological, or biochemical imbalance which has caused impairment in functioning and/or behavior.

(21) "Outpatient therapy services" means the provision of psychotherapy and related services by a licensed mental health professional acting within the scope of the professional's license or these same services provided by an in-training practitioner in a mental health center.

~~(16)~~ (22) "Program supervisor" means a designated licensed mental health professional having daily overall responsibility for the operation of a mental health center area of endorsement.

~~(17)~~ (23) "Program therapist" means a licensed mental health professional with the training and knowledge to provide psychotherapy.

~~(18)~~ (24) "Representative payee" means a payee appointed by the social security administration when a beneficiary is unable to manage their social security benefits, supplementary security income or medicare benefits.

~~(19)~~ (25) "Seclusion" means staff initiating or escorting a child or adolescent to a seclusion time-out room to calm down and appropriately manage their behavior.

(26) "Severe disabling mental illness" means, with respect to a person who is 18 or more years of age, that the person meets the requirements defined in ARM 37.86.3502.

(27) "Serious emotional disturbance" means, with respect to a youth between the ages of 6 and 17 years, that the youth meets the requirements defined in ARM 37.86.3702.

~~(20) "Severe emotional disturbance" means a mental illness that has a significant impact on the child or adolescent's functioning over an extended period of time.~~

(28) "Site based" means a specific location where the treatment services are consistently provided.

~~(21)~~ (29) "Time-out" means staff, child or adolescent initiating a time-out generally away from the group activity to enable the child or adolescent to calm down and appropriately manage their behavior.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.607 [37.106.1906] MENTAL HEALTH CENTER: SERVICES AND LICENSURE ~~(1) Services provided by a mental health center must be rendered by a single administration in a discrete~~

~~physical facility or multiple facilities or by written agreements with other facilities such as hospitals, clinics, or educational institutions which may combine to provide services.~~

(1) Each applicant for licensure shall submit a license application to the department requesting approval to provide the services in (3) and may request approval to provide one or more of the services in (4).

(2) Services provided by a mental health center must be rendered by a single administration in a discrete physical facility or multiple facilities or by written agreements with other facilities such as hospital, clinics, or educational institutions which may combine to provide services.

~~(2)~~ (3) ~~A~~ For a mental health center ~~shall provide one or more of~~ to be licensed, it must make available to its clients all of the following services:

~~(a) child and adolescent intensive case management;~~

~~(b) adult intensive case management;~~

~~(c) child and adolescent day treatment program;~~

~~(d) adult day treatment program;~~

~~(e) mental health group home;~~

~~(f)~~ (a) crisis telephone services; ~~or~~

(b) medication management services;

(c) outpatient therapy services;

(d) community-based psychiatric rehabilitation and support; and

(e) chemical dependency treatment.

~~(g) crisis intervention stabilization facility.~~

(4) A mental health center, with the appropriate license endorsement, may provide one or more of the following services:

(a) child and adolescent intensive case management;

(b) adult intensive case management;

(c) child and adolescent day treatment;

(d) adult day treatment;

(e) adult foster care;

(f) mental health group home; or

(g) crisis stabilization program.

(5) Each service listed in (4) that is endorsed by the department shall be recorded on the mental health center's license.

(6) A mental health center may not condition a client's access to one of its services upon the client's receipt of another service provided by the mental health center.

(7) Mental health center services must be available to recipients continuously throughout the year.

(8) A mental health center must report to the department, in writing, any of the following changes within at least 30 days before the planned effective date of the change:

(a) a change of administrator;

(b) a change of medical director;

(c) any change in administrative location or service location;

(d) a change in the name of the agency; or

(e) the discontinuation of providing a service for which the mental health center has an area of endorsement.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.608 [37.106.1907] MENTAL HEALTH CENTER: ORGANIZATIONAL STRUCTURE (1) Each mental health center shall employ or contract with an administrator who shall:

(a) maintain daily overall responsibility for the mental health center's operations;

(b) develop and oversee the implementation of policies and procedures pertaining to the operation and services of the mental health center;

(c) establish written orientation and training procedures for all employees including new employees, relief workers, temporary employees, students, interns, volunteers, and trainees. The training must include orientation on all the mental health center's policies and procedures;

(d) establish written policies and procedures:

(i) defining the responsibilities, limitations, and supervision of students, interns, and volunteers working for the mental health center;

(ii) for verifying each professional staff member's credentials, when hired, and thereafter, to ensure the continued validity of required licenses; and

(iii) for client complaints and grievances, to include an opportunity for appeal, and to inform clients of the availability of advocacy organizations to assist them.

(e) develop an organizational chart that accurately reflects the current lines of administration and authority; and

(f) maintain a file for all client incident reports.

(2) Each mental health center shall employ or contract with a medical director who shall:

~~(a) coordinate with and advise the staff of the mental health center on clinical matters; and~~

~~(b) provide direction, consultation, and training regarding the mental health center's programs and operations as needed~~.

(a) ensure that all clients receive evaluation, diagnosis, treatment, medical screening and medical/psychiatric evaluation whenever indicated;

(b) oversee the work of all physicians;

(c) ensure the implementation of clinical staff development and training activities;

(d) provide psychiatric and medication management services;

(e) advise the administrator on the development and review of the mental health center's programs and supervision of clinical staff;

(f) act as a liaison for the mental health center with community physicians, hospital staff, and other professionals and agencies with regard to psychiatric services; and

(g) ensure the quality of treatment and related services provided by the mental health center's professional staff, through participation in the mental health center's ongoing

quality assurance and audit process.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.609 [37.106.1908] MENTAL HEALTH CENTER: ~~CLINICAL SERVICES~~ POLICIES AND PROCEDURES (1) Each mental health center shall maintain a ~~clinical services policies and procedures~~ policy and procedure manual. The manual must be reviewed and approved, at least annually, by the medical director and administrator. ~~At a minimum, the~~ The manual must contain policies and procedures for:

(a) notifying staff of all changes in policies and procedures;

(b) addressing client rights, including a procedure for informing clients of their rights;

(c) addressing and reviewing ethical issues faced by staff and reporting allegations of ethics violations to the applicable professional licensing authority;

(d) informing clients of the policy and procedures for client complaints and grievances;

(e) initiating services to clients;

(f) informing clients of rules governing their conduct and the types of infractions that can result in suspension or discontinuation of services offered by the mental health center;

(g) suspending or discontinuing program services with the following information to be provided to the client:

(i) the reason for suspending or discontinuing services or access to programs;

(ii) the conditions that must be met to resume services or access to programs;

(iii) the grievance procedure that may be used to appeal the suspension or discontinuation; and

(iv) what services, if any, will be continued to be provided even though participation in a particular service or program may be suspended or discontinued.

(h) referring clients to other providers or services that the mental health center does not provide; and

(i) conducting quality assessment and improvement activities~~;~~ .

~~(j) conducting medication management services, if clinically indicated, for:~~

~~(i) self-administering of medications by clients;~~

~~(ii) administering and monitoring client medications, both prescriptive and over the counter medications, by appropriately licensed staff working within the scope of their practice;~~

~~(iii) assessing the need for medication adjustment or new medication prescriptions for clients;~~

~~(iv) addressing how the clients will be monitored when medication adjustments or new prescriptions are ordered;~~

~~(v) maintaining a medical administration record, for each client, listing all medications used and all doses taken or not taken by the client, and when not taken, the reason for omission of any scheduled dose of medication;~~

~~(vi) documenting, reporting and addressing in a timely manner, any medication errors, adverse and non-adverse drug reactions;~~

~~(vii) providing and documenting education to each client about the effects, side effects, contraindications and management procedures of the client's medication;~~

~~(viii) providing safe and secure storage of all medications;~~

~~(ix) providing segregated refrigeration for medication from food items within the temperature range specified by the manufacturer for medication that requires refrigeration; and~~

~~(x) storing medication in the container dispensed by the pharmacy or in the container in which it was purchased in the case of over the counter medication, with the label intact and clearly legible.~~

(2) If the mental health center provides representative payee services, the center must comply with the accounting and reporting procedures established by the commissioner of social security as identified in section 1631 (a)(2) of the Social Security Act and must further ensure that clients are involved in budgeting their money and that budget sheets be used which require client signatures.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.610 [37.106.1909] MENTAL HEALTH CENTER: CLINICAL RECORDS (1) Each mental health center shall:

(a) collect assessment data and maintain clinical records on all clients who receive services and ensure the confidentiality of clinical records in accordance with the Uniform Health Care Information Act, Title 50, chapter 16, part 5, MCA. At a minimum, the clinical record must include:

(i) ~~an initial and complete~~ a clinical intake ~~client~~ assessment;

(ii) additional assessments or evaluations, if clinically indicated;

(iii) a copy of the client's individualized treatment plan and all modifications to the treatment plan;

(iv) progress notes which indicate whether or not the stated treatment plan has been implemented, and the degree to which the client is progressing, or failing to progress, toward stated treatment objectives;

(v) medication orders from the prescribing physician and documentation of the administration of all medications;

(vi) signed orders by a licensed mental health professional for any restrictions of rights and privileges accorded clients of the mental health center including the reason(s) for the restriction; and

(vii) a ~~termination report~~ discharge summary when the client's file is closed.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.615 [37.106.1915] MENTAL HEALTH CENTER: CLIENT ASSESSMENTS (1) Each mental health center shall complete ~~an~~ a clinical intake assessment within 12 hours after admission for crisis ~~intervention and~~ stabilization ~~facility~~ program services and within 3 contacts, or 14 days from the first contact, whichever is later, for other services. Intake assessments must be conducted by a licensed mental health professional trained in clinical assessments and must include the following information in a narrative form to substantiate the client's diagnosis and provide sufficient detail to individualize treatment plan goals and objectives:

(a) presenting problem and history of problem;

(b) mental status;

(c) diagnostic impressions;

(d) initial treatment plan goals;

(e) risk factors to include suicidal or homicidal ideation;

(f) psychiatric history;

(g) substance use/abuse and history;

(h) current medication and medical history;

(i) financial resources and residential arrangements; ~~and~~

(j) education and/or work history~~.~~ ; and

(k) legal history relevant to history of illness, including guardianships, civil commitments, criminal mental health commitments, and prior criminal background.

(2) Based on the client's clinical needs, each mental health center shall conduct additional assessments which may include, but are not limited to, physical, psychological, emotional, behavioral, psychosocial, recreational, vocational, ~~and~~ psychiatric, and chemical dependency evaluations.

(3) Each mental health center shall establish a list of providers used for outside assessments and a written process for referring clients for assessment services, if any, not provided by the center.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.616 [37.106.1916] MENTAL HEALTH CENTER: INDIVIDUALIZED TREATMENT PLANS (1) Based upon the findings of the assessment(s), each mental health center shall establish an individualized treatment plan for each client within 24 hours after admission for crisis ~~intervention and~~ stabilization ~~facility~~ program services and within 5 contacts, or 21 days from the first contact, whichever is later, for other services. The treatment plan must ~~contain~~:

(a) identify treatment team members, from within and outside of the mental health center, who are involved in the client's treatment or care;

~~(a)~~ (b) specifically ~~stated and~~ state measurable treatment plan objectives that serve the client in the least restrictive and most culturally appropriate therapeutic environment;

~~(b)~~ (c) ~~a description of~~ describe the specific services

which will be provided in order to achieve each objective;

(d) specifically state how the service or intervention will assist the client in meeting the objective;

~~(c)~~ (e) ~~the identification of~~ identify the staff person ~~or~~ and program responsible for each treatment service to be provided;

~~(d)~~ (f) include the client's ~~and~~ or parent/guardian's signature indicating participation in the development of the treatment plan. If the client's ~~and~~ or parent/guardian's participation is not possible or inappropriate, written documentation must indicate the reason;

~~(e)~~ (g) include the signature and date of the mental health center's licensed mental health professional and of the person(s) with primary responsibility for implementation of the plan indicating development and ongoing review of the plan; and

~~(f)~~ (h) state the criteria for discharge, including the client's level of functioning which will indicate when a particular service is no longer required.

(2) The treatment plan must be reviewed at ~~intervals of no less than~~ least every 90 days for ~~all clients~~ each client and whenever there is a significant change in the client's condition. A change in level of care or referrals for additional mental health services must be included in the treatment plan.

(3) The treatment plan review must be conducted by at least one licensed mental health professional from the mental health center, and include persons with primary responsibility for implementation of the plan. Other staff members must be involved in the review process as clinically indicated. Outside service providers must be contacted and encouraged to participate in the treatment plan review, as clinically indicated. ~~The review must be comprehensive with regard to the client's response to treatment and result in either an amended treatment plan or a statement of the continued appropriateness of the existing plan. The results must be entered into the client's clinical record. The documentation must include a description of the client's functioning and justification for each client goal.~~

(a) A treatment team meeting for establishing an individual treatment plan and for treatment plan review must be conducted face-to-face and include:

(i) the client;

(ii) the client's guardian if applicable;

(iii) the client's parents or guardian if the client is a youth and the involvement by the parent or guardian is clinically appropriate; and

(iv) case manager, if the client has one.

(b) The treatment plan review must be comprehensive with regard to the client's response to treatment and result in either an amended treatment plan or a statement of the continued appropriateness of the existing plan. The results of the treatment plan review must be entered into the client's clinical record. The documentation must include a description of the client's functioning and justification for each client goal.

(4) If the mental health center develops separate treatment plans for each service, the treatment plans must be integrated with one another and a copy of each treatment plan must be kept in the client's record.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.617 [37.106.1917] MENTAL HEALTH CENTER: CLIENT ~~TERMINATION~~ DISCHARGE (1) Each mental health center shall prepare a ~~termination report~~ discharge summary for each client no longer receiving services. The ~~termination report~~ discharge summary must include:

(a) the reason for ~~termination~~ discharge;

(b) a summary of the services provided by the mental health center including recommendations for aftercare services and referrals to other services, if applicable;

(c) an evaluation of the client's progress as measured by the treatment plan and the impact of the services provided by the mental health center; and

(d) the signature of the staff member who prepared the report and the date of preparation.

(2) ~~Termination reports~~ Discharge summaries must be filed in the clinical record within 1 month of the date of ~~termination~~ the client's formal discharge from services or within 3 months of the date of the client's last service when no formal discharge occurs.

(3) For cases left open when a client has not received services for over 30 days, documentation must be entered into the record indicating the reason for leaving the case open.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.622 [37.106.1919] MENTAL HEALTH CENTER: QUALITY ASSESSMENT (1) Each mental health center shall implement and maintain an active quality assessment program using information collected to make improvements in the mental health center's policies, procedures and services. At a minimum, the program must include procedures for:

(a) conducting client satisfaction surveys, at least annually, for all mental health center programs~~;~~ . The survey must address:

(i) whether the client, parent or guardian is adequately involved in the development and review of the client's treatment plan;

(ii) whether the client, parent or guardian was informed of client rights and the mental health center's grievance procedure;

(iii) the client's, parent's or guardian's satisfaction with all mental health center programs in which the client participated; and

(iv) the client's, parent's, or guardian's recommendations for improving mental health center's services.

~~(b) reviewing emergency or unusual occurrences; and~~

(b) maintaining records on the occurrence, duration and frequency of seclusion and physical restraints used; and

~~(c) using quality assessment information collected to make improvements in the mental health center's policies and procedures and services.~~

(c) reviewing, on an ongoing basis, incident reports, grievances, complaints, medication errors, and the use of seclusion and/or physical restraint with special attention given to identifying patterns and making necessary changes in how services are provided.

(2) Each mental health center shall prepare and maintain on file an annual report of improvements made as a result of the quality assessment program.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.640 [37.106.1935] MENTAL HEALTH CENTER: CHILD AND ADOLESCENT AND ADULT INTENSIVE CASE MANAGEMENT (1) In addition to the requirements established in ~~ARM 16.32.601 through 16.32.630~~ this subchapter, each mental health center providing child and adolescent and adult intensive case management services shall comply with the requirements established in this rule.

(2) Each mental health center providing intensive case management program services shall:

(a) employ or contract with a program supervisor, experienced in providing services to individuals with a mental illness. The program supervisor shall meet with each intensive case manager, either individually or in a group meeting, at least every 30 days. Individual supervision of case managers must be offered by the mental health center as needed and may be initiated by either the case manager or the supervisor;

(b) employ or contract with case managers who have the knowledge and skills needed to effectively perform case management duties. Minimum qualifications for a case manager are a bachelor's degree in a human services field with at least 1 year of full time experience serving people with mental illnesses. Individuals with other educational backgrounds who, as providers, consumers, or advocates of mental health services have developed the necessary skills, may also be employed as intensive case managers. The mental health center's case management position description must contain equivalency provisions;

(c) train the program supervisor and program staff in the therapeutic de-escalation of crisis situations to ensure the protection and safety of the clients and staff. The training must include the use of physical and non-physical methods of managing clients and must be updated, at least annually, to ensure the maintenance of necessary skills;

(d) maintain progress notes for each client. The progress notes must be entered into the client's clinical record at least every 30 days and upon the occurrence of any significant change

in the client's condition;

(e) develop written policies and procedures addressing the independence of the intensive case manager and intensive case management program. At a minimum, the policies and procedures must address:

(i) the intensive case manager acting as a client's advocate in involuntary commitment proceedings;

(ii) the intensive case manager's role in conflicts between the client and the mental health center or other agencies;

(iii) the ability of the intensive case manager to freely advocate for services from or outside of the mental health center on behalf of the client;

(iv) the relationship between the primary therapist, if the client has one, and the case manager;

(v) the obligation to report information to the mental health center staff that the client has requested to be kept confidential; and

(vi) the ability of the intensive case manager to contact an advocacy organization if the case manager believes the mental health center is unresponsive to the needs of the client.

(3) The availability of intensive case management services may not be made contingent upon a client's willingness to receive other services. A client suspended or excluded from other programs or services provided by the mental heath center may not be restricted or suspended from intensive case management services solely due to the action involving the other program or services.

(4) Intensive case management services are largely provided throughout the community rather than in an office or a facility. All contacts with clients must occur in a place that is convenient for the client. More than 50% of a case manager's in person contacts with clients must be outside of the mental health center's facility. Restrictions may not be placed on a case manager's ability to meet with a client in any reasonable location.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.644 [37.106.1936] MENTAL HEALTH CENTER: CHILD AND ADOLESCENT DAY TREATMENT ~~PROGRAM~~ (1) In addition to the requirements established in ~~ARM 16.32.601 through 16.32.630~~ this subchapter, each mental health center providing a child and adolescent day treatment program shall comply with the requirements established in this rule.

(2) The child and adolescent day treatment program must be site based and occur in a location separate from the child and adolescent's regular classroom. Appropriate, supplemental day treatment services may be delivered off site. The program shall:

(a) operate at least 5 days per week for at least 3 hours per day, unless school holidays preclude day treatment activities. Preschool day treatment programs shall operate at

least 3 days a week, 3 hours a day, unless school holidays preclude day treatment activities;

(b) employ or contract with a program supervisor who is knowledgeable about the service and support needs of children and adolescents with ~~severe~~ serious emotional disturbances. The program therapist or program supervisor must be site based;

(c) establish admission criteria which assess the child or adolescent's needs and the appropriateness of the services to meet those needs. Students still in school, 18 years of age or older, remain eligible for the program;

(d) provide mental health services according to the individualized treatment plan which may include individual therapy, family and group therapy, social skills training, life skills training, pre-vocational training, therapeutic recreation services and ensure access to emergency services;

(e) provide appropriate educational services to clients including special education, if necessary, through~~:~~

~~(i)~~ full collaboration with a school district~~;~~ .

~~(ii) employment of educational staff within the program; or~~

~~(iii) interagency agreements with educational agencies;~~

(f) provide referral and aftercare coordination with inpatient facilities, residential treatment programs, or other appropriate out-of-home placement programs;

(g) establish policies and procedures regarding the use of time-out and seclusion. Time-out and seclusion may not be used with a locked door. Mechanical restraints may not be used. If time-out is used, intermittent to continuous staff observation is required, as clinically indicated. If seclusion is used, continuous staff observation is required. Written permission from the parent or legal guardian must be obtained for the use of non-aversive and aversive interventions and must be placed in the client's clinical record. The clinical record must include signed orders by a licensed mental health professional for use of seclusion, a detailed description of the circumstances warranting such action, and the date, time and duration of the seclusion;

(h) require and ensure that the program supervisor and all staff shall each have a minimum of 6 contact hours of annual training relating to child and adolescent mental illnesses and treatment; and

(i) maintain progress notes for each client. The progress notes must be entered into the client's clinical record at least every 30 days and upon the occurrence of any significant change in the client's condition.

(3) The day treatment ~~program~~ staff shall attend all child study team (CST) meetings and individual education planning meetings when clinically indicated and permission has been granted by the parent or legal guardian or child, when age appropriate. If the client requires an individualized education program (IEP), a copy of the IEP must be included in the client's treatment plan unless the parent or legal guardian or child, when age appropriate, ~~fails~~ refuses to authorize release to the mental health center.

(4) The program supervisor and day treatment program staff must be trained in the therapeutic de-escalation of crisis situations to ensure the protection and safety of the clients and staff. The training must include the use of physical and non-physical methods of managing children and adolescents and must be updated, at least annually, to ensure that necessary skills are maintained.

(5) ~~Each licensed mental health professional~~ Each program therapist or in-training practitioner therapist in the program shall carry an active caseload not to exceed 12 day treatment clients. The therapist who carries the caseload must also provide the therapy and must be on site during the entire day treatment hours of operation. The program supervisor may carry a caseload of up to 6 day treatment clients. ~~The 1 to 12 ratio applies only to clients attending the program at least 3 to 5 days a week; the ratio does not apply to clients attending the program 1 to 2 days a week.~~

(6) There must be at least one full-time equivalent (FTE) clinical or mental health support staff member for every ~~8~~ 6 clients in the program. Support staff means an adult, under the supervision of the program supervisor or therapist, with experience in working with children and adolescents with severe emotional disturbances. For the purpose of this ratio, the number of participants in the program must be based on the average daily attendance. This ratio includes the site based therapist or program supervisor, if the therapist or supervisor spends at least half of the time in the classroom with the clients and is readily available at other times when the need arises. The program therapist's office must be in close proximity to the day treatment classroom to provide timely interventions to clients. Mental health staff must not be shared with other programs. Either the mental health support staff member, the therapist or the supervisor must be in the classroom at all times during operation of the program.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.645 [37.106.1937] MENTAL HEALTH CENTER: ADULT DAY TREATMENT ~~PROGRAM~~ (1) In addition to the requirements established in ~~ARM 16.32.601 through 16.32.630~~ this subchapter, each mental health center providing ~~an~~ adult day treatment ~~program~~ shall comply with the requirements established in this rule.

(2) The adult day treatment program shall:

(a) operate at least 2 days a week, for at least 4 hours a day;

(b) employ or contract with a program supervisor who is knowledgeable about the service and support needs of individuals with a mental illness, day treatment programming and psychosocial rehabilitation. The program supervisor or program therapist must be site based;

(c) provide, by means of a variety of individual and group treatment modalities, therapy and rehabilitation in the areas of

independent living skills, crisis intervention, pre-vocational and vocational skill building, socialization, and recreational activities;

(d) structure its treatment activities to promote increasing levels of independence in the client' functioning;

(e) require the program supervisor and all program staff to each have a minimum of 6 contact hours of annual training relating to adult mental illness and treatment;

(f) maintain progress notes for each client. The progress notes must be entered into the client's clinical record at least every 30 days and upon the occurrence of any significant change in the client's condition; and

(g) maintain a client to staff ratio that may not exceed 10 clients to 1 staff member.

(3) The program supervisor and day treatment program staff must be trained in the therapeutic de-escalation of crisis situations to ensure the protection and safety of the clients and staff. The training must include the use of physical and non-physical methods of managing clients, and must be updated, at least annually, to ensure that necessary skills are maintained.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.646 [37.106.1938] MENTAL HEALTH CENTER: MENTAL HEALTH GROUP HOME (1) In addition to the requirements established in ~~ARM 16.32.601 through 16.32.630~~ this subchapter, each mental health center providing a mental health group home shall comply with the requirements established in this rule.

(2) The purpose of a mental health group home is to provide residential treatment for adults with a mental illness.

(3) The mental health group home is considered to be a community residential facility for the purposes of local zoning and building codes reviews.

(4) The mental health group home must be annually inspected for compliance with fire codes by the state fire marshal or the marshal's designee. The home shall maintain a record of such inspection for at least 1 year following the date of the inspection.

(5) The mental health group home shall:

(a) employ or contract with a program supervisor who is knowledgeable about the service and support needs of individuals with mental illnesses;

(b) maintain staffing at least 8 hours daily. Additional staff hours and supervision shall be dictated by the needs of the group home residents;

(c) ensure that 24 hour a day emergency mental health care is available through the mental health center or other contracted entities;

(d) structure its treatment activities to promote increasing levels of independence in the client's functioning;

(e) establish admission criteria which assess the individual's needs and the appropriateness of the services to

meet those needs. At a minimum, admission criteria must require that the person:

(i) be 18 years of age or older and be unable to maintain the stability of their mental illness in an independent living situation;

(ii) be diagnosed with a mental illness;

(iii) be medically stable;

(iv) not be an immediate danger to self or others;

(v) requires a transitional residential level of care from a short acute hospital stay or long term commitment, or requires some ongoing residential structure or supervision;

(vi) sign a contract to follow group home rules.

(f) assess new admissions to the mental health group home and offer ongoing treatment and training in the following areas:

(i) community adjustment (ability to use community resources such as stores, professional services, recreational facilities, government agencies, etc.);

(ii) personal care (grooming, food preparation, housekeeping, money management, etc.);

(iii) socialization; and

(iv) recreation/leisure.

(g) maintain progress notes for each client. The progress notes must be entered into the client's clinical record at least every 30 days and upon the occurrence of any significant change in the client's condition.

(6) Staff working in the mental health group home must:

(a) be 18 years of age;

(b) possess a high school diploma or GED;

(c) have received training in the treatment of adults with a mental illness;

(d) be capable of implementing each resident's treatment plan; and

(e) be trained in the Heimlich maneuver and maintain certification in cardiopulmonary resuscitation (CPR).

(7) The program supervisor shall orient new staff on how to deal with client rule violations, new admissions, emergency situations, after hour admissions and client incident reports. Written policies and procedures for handling day-to-day operations must be available at the group home.

(8) The program supervisor and all program staff must each have a minimum of 6 contact hours of annual training relating to adult mental illness and treatment.

(9) The program supervisor and group home program staff must be trained in the therapeutic de-escalation of crisis situations to ensure the protection and safety of the residents and staff. The training must include the use of physical and non-physical methods of managing residents, and must be updated, at least annually, to ensure that necessary skills are maintained.

(10) Upon admission, each resident must be provided with:

(a) a written statement of resident rights which, at a minimum, include the applicable patient rights in 53-21-142, MCA;

(b) a copy of the mental health center grievance

procedure; and

(c) the written rules of conduct including the consequences for violating the rules.

(11) At the time of a resident's discharge from the group home, the staff shall assist the resident in making arrangements for housing, employment, education, training, treatment, and/or other services needed for adequate adjustment to community living.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.650 [37.106.1945] MENTAL HEALTH CENTER: CRISIS TELEPHONE SERVICES (1) In addition to the requirements established in ~~ARM 16.32.601 through 16.32.630~~ this subchapter, each mental health center ~~providing~~ shall provide crisis telephone services ~~shall~~ and comply with the following requirements: ~~established in this rule.~~

~~(2) The mental health center providing crisis telephone services shall:~~

(a) ensure that crisis telephone services are available 24 hours a day, 7 days a week. Answering services and receptionists may be used to transfer calls to individuals who have been trained to respond to crisis calls;

(b) employ or contract with appropriately trained individuals, under the supervision of a licensed mental health professional, to respond to crisis calls. An appropriately trained individual is one who has received training and instruction regarding:

(i) the policies and procedures of the mental health center for crisis intervention services;

(ii) crisis intervention techniques;

(iii) conducting assessments of risk of harm to self or others, and prevention approaches;

~~(iii)~~ (iv) the process for voluntary and involuntary hospitalization;

~~(iv)~~ (v) the signs and symptoms of mental illness; and

~~(v)~~ (vi) the appropriate utilization of community resources.

(c) ensure that a licensed mental health professional provides consultation and backup, as indicated, for unlicensed individuals responding to crisis calls;

(d) establish written policies and procedures governing in-person contacts between crisis responders and crisis callers. The policies and procedures must address the circumstances under which the contacts may or may not occur and safety issues associated with in-person contacts;

(e) publish the crisis telephone number in the local telephone directory in the yellow pages under mental health services;

(f) maintain documentation for each crisis call. The documentation must reflect:

(i) the date of the call;

(ii) the staff involved;

(iii) identifying data, if possible;

(iv) the nature of the emergency, including an assessment of dangerousness/lethality, medical concerns, and social supports; and

(v) the result of the intervention.

~~(3)~~ (2) No individual may respond to crisis calls until the mental health center documents in writing in the individual's personnel file that the individual has received the training and instruction required in ~~(2)~~(1)(b) above. Additional training and instruction must be provided to crisis responders based upon an ongoing assessment of presenting problems and responder needs and to ensure that necessary crisis intervention skills are maintained.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

16.32.651 [37.106.1946] MENTAL HEALTH CENTER: CRISIS ~~INTERVENTION AND~~ STABILIZATION ~~FACILITY~~ PROGRAM (1) In addition to the requirements established in ~~ARM 16.32.601 through 16.32.630~~ this subchapter, each mental health center providing a crisis ~~intervention and~~ stabilization ~~facility~~ program shall comply with the requirements established in this rule.

(2) The facility must be annually inspected for compliance with fire codes by the state fire marshal or the marshal's designee. The facility shall maintain a record of such inspection for at least 1 year following the date of the inspection.

(3) The crisis ~~intervention and~~ stabilization ~~facility~~ program shall:

(a) employ or contract with a program supervisor knowledgeable about the service and support needs of individuals with mental illness experiencing a crisis. The program supervisor or a licensed mental health professional must be site based;

(b) require staff working in the crisis ~~intervention and~~ stabilization ~~facility~~ program:

(i) be 18 years of age;

(ii) possess a high school diploma or GED; and

(iii) be capable of implementing each resident's treatment plan.

(c) ensure that the program supervisor and all staff each have a minimum of 6 contact hours of annual training relating to the service and support needs of individuals with mental illness experiencing a crisis;

(d) orient staff prior to assuming the duties of the position on:

(i) the types of mental illness and treatment approaches;

(ii) suicide risk assessment and prevention procedures; and

(iii) program policies and procedures, including emergency procedures.

(e) orient staff within 8 weeks from assuming the duties

of the position on:

(i) therapeutic communications;

(ii) the legal responsibilities of mental health service providers;

(iii) mental health laws of Montana regarding the right of consumers;

(iv) other services provided by the mental health center; and

(v) infection control and prevention of transmission of blood borne pathogens.

(f) maintain written program policies and procedures at the facility;

(g) train staff in the Heimlich maneuver and ensure staff maintain current certification in cardiopulmonary resuscitation (CPR).;

(h) maintain 24 hour awake staff;

(i) maintain a staff-to-patient ratio dictated by resident need. A procedure must be established to increase or decrease staff coverage as indicated by resident need;

(j) establish admission criteria which assess the individual's needs and the appropriateness of the services to meet those needs. At a minimum, admission criteria must require that the person:

(i) be at least 18 years of age;

(ii) be medically stable (with the exception of the person's mental illness);

(iii) be drug and alcohol free to the extent it does not significantly impair the individual's ability to meet the other admission criteria;

(iv) be willing to enter the program, follow program rules, and accept recommended treatment;

(v) be willing to sign a no-harm contract, if clinically indicated;

(vi) not require physical or mechanical restraint;

(vii) be in need of frequent observation on a 24 hour basis.

(k) establish written policies and procedures:

(i) for completing a medical screening and establishing medical stabilization, prior to admission;

(ii) to be followed should residents, considered to be at risk for harming themselves or others, attempt to leave the facility without discharge authorization from the licensed mental health professional responsible for their treatment; and

(iii) for the secure storage of toxic household chemicals and sharp household items such as utensils and tools.

(l) when clinically appropriate, provide each resident upon admission, or as soon as possible thereafter:

(i) a written statement of resident rights which, at a minimum, include the applicable patient rights in 53-21-142, MCA;

(ii) a copy of the mental health center grievance procedure; and

(iii) the written rules of conduct including the consequences for violating the rules.

(m) ensure inpatient psychiatric hospital care is available through a transfer agreement for residents in need of hospitalization;

(n) maintain progress notes for each resident. The progress notes must be entered at least daily into the resident's clinical record. The progress notes must describe the resident's physical condition, mental status, and involvement in treatment services~~.~~; and

(o) make referrals for services that would help prevent or diminish future crises at the time of the resident's discharge. Referrals may be made for the resident to receive additional treatment or training or assistance such as securing housing.

(4) The program supervisor and program staff must be trained in the therapeutic de-escalation of crisis situations to ensure the protection and safety of the residents and staff. The training must include the use of physical and non-physical methods of managing residents and must be updated, at least annually, to ensure that necessary skills are maintained.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

4. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

OLD	NEW	
16.32.601	37.106.1901	Mental Health Center: Application of Other Rules
16.32.621	37.106.1918	Mental Health Center: Personnel Records
16.32.623	37.106.1925	Mental Health Center: Compliance with Building and Fire Codes, Fire Extinguishers, Smoke Detectors and Maintenance
16.32.624	37.106.1926	Mental Health Center: Physical Environment
16.32.627	37.106.1927	Mental Health Center: Emergency Procedures

5. The rule 16.32.630 as proposed to be repealed is on page 16-1554.10 of the Administrative Rules of Montana.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103 and 50-5-204, MCA

6. As part of the transition from the mental health managed care program in 1997, the department expanded the definition of licensed mental health center to include providers in addition to the community mental health centers created by

Title 53, chapter 21, part 2, MCA. As a result of the expansion, the department implemented new licensure rules in 1998.

These currently proposed amendments regarding mental health center licensure aim to more clearly define the role and responsibilities of all mental health centers. The amendments add minimum operational standards for all mental health centers, provide an assurance of uniformity of services across Montana, and strive to improve the quality of services.

With Rule I, the department proposes that all mental health centers offer a minimum core of services, including medication management. The rule provides the guidelines for this service including the requirements for record maintenance, medication administration and monitoring, and handling of medications. Because the department will require that medication management be available to all clients served by all mental health centers, as seen in the proposed amendment to ARM 16.32.607(3), it is important that the parameters of the service are clearly identified so that compliance can be measured.

Rule I is proposed to replace the requirements for medication management found in ARM 16.32.609(1)(j). The department felt ARM 16.32.609(1)(j) did not sufficiently define the components of medication management that is needed to serve clients in the community.

Failure to provide the clarification proposed in Rule I would result in inconsistent medication management services for all mental health centers. Inconsistent medication management services would in turn provide a disservice to mental health center clients who more than ever depend on medications to treat their mental illnesses.

Rules II through X provide standards for adult foster care services for adults with mental illnesses. They require a license endorsement and include specific requirements for mental health centers offering this service, including: training of foster care providers in mental health care; requirements for a program supervisor for oversight; requirements for adult foster care specialists to assist in meeting the needs of clients with mental illnesses; service components of adult foster care; and treatment planning.

Rules II through X seek to address the growing use of foster care services by licensed mental health centers to assist in decreasing admissions to the Montana State Hospital. Adult foster care providers are generally not familiar with the diverse needs of the clients with mental illnesses. The requirements for orientation, training, and clinical support for adult foster care providers will increase the potential for success of adults with serious mental illnesses in the community.

When drafting Rules II through X, the department looked at existing mental health center programs that provide adult foster care, and the department's own adult foster care licensure rules found in ARM Title 37, chapter 100, subchapter 1. The department chose from these sources the standards it felt that best addressed mental health centers offering adult foster care and their clients.

The alternative to Rules II through X is to not have any adult foster care standards. The department would continue to reimburse for adult foster care services without taking the steps to ensure the services are appropriate for the needs of clients with severe and disabling mental illnesses. Without assurances provided in the proposed rules, mental health center clients may be at risk for failing at community living, diminishing their quality of lives and health, and increasing their admissions and lengths of stay at the Montana State Hospital.

The proposed amendments to ARM 16.32.602 add to the definitions three of the proposed core mental health center services (as proposed in ARM 16.32.607): chemical dependency treatment; community-based psychiatric rehabilitation and support; and outpatient therapy services. These proposed definitions will ensure that providers are working with the same understanding of these services, assuring service consistency for clients.

Other definitions have been added to provide clarification within other subsections of the rule, including: guardian; in-training practitioner services; licensed health care professional; severe disabling mental illness; and serious emotional disturbance. These definitions are needed because these terms are used in the proposed rules. From the department's financial perspective, the definitions ensure consistency with other administrative rules pertaining to reimbursement for mental health services.

The alternative to the proposed amendments to ARM 16.32.602 would be to do nothing, leaving the mental health centers to individually interpret service definitions, which may lead to inconsistency in the center's provisions of services throughout the state.

The proposed amendments to ARM 16.32.607 combine the original provisions of that rule, "Mental Health Center: Services", and "Mental Health Center: License Endorsement" (ARM 16.32.630 is slated for repeal as a result). This proposed change intends to clarify what services may be provided by a mental health center, how the services are to be administratively provided, what is required in the licensure application process, and areas of licensure endorsement for different services.

The current provision contained in ARM 16.32.607 permits a

licensure applicant to provide as few as one service endorsement and meet the requirements for licensure. Therefore, some mental health centers licensed since July 1, 1999 provide only one service (e.g., child and adolescent case management or adolescent day treatment). Other centers, including the community mental health centers, provide a full array of services. The proposed amendment to ARM 16.32.607 would establish core services for all mental health centers that include crisis telephone services, medication management, outpatient therapy, community-based psychiatric rehabilitation and support services, and chemical dependency treatment. The proposed amendment also adds adult foster care as a licensure endorsement. These core services, when combined with those that have licensure endorsement, result in improved service and support to individuals with mental illness.

The proposed provision of ARM 16.32.607(6) requires that a mental health center provide services to individuals who have a demonstrated need for the service without consideration of other services provided by the mental health center. The proposed provision of ARM 16.32.607(7) requires that mental health center services are made available to individuals continually throughout the year. Both of these provisions address the significant growth of licensed mental health centers that has occurred since July 1999. These centers serve populations that are defined and restricted by variables other than need for service (e.g., enrollment within a defined school district or treatment in the provider's therapeutic group home). Both ARM 16.32.607(6) and (7) strive to provide consistent and continuing services to clients throughout the state.

The alternative to the proposed amendments in ARM 16.32.607 would be no change. Some licensed mental health centers would continue to provide only minimal services. Individuals and families would continue to receive fragmented or incomplete services from some mental health centers. There would likely be a continuing dilution of quality and comprehensiveness among the core service providers in the public mental health system. Not addressing these issues in ARM 16.32.607 would be legally, clinically, and fiscally irresponsible for the department and the mental health clients served.

The proposed amendment to ARM 16.32.608(1)(d)(iii) establishes requirements for an appeal process within each licensed mental health center and a process to inform clients of the availability of advocacy organizations. The requirement that an appeal process be included in each mental health center's policy and procedure manual will provide for an identified procedure for clients who wish to appeal an action by the mental health center. In addition, clients would be informed of advocacy organizations for support. Presently, community mental health centers must adhere to a uniform grievance procedure, while other licensed mental health centers do not have such a requirement. The proposed amendment to ARM 16.32.608(1)(d)(iii)

would establish consistency among all licensed mental health centers and create the opportunity for clients to appeal decisions made by mental health centers.

Not having the proposed amendment to ARM 16.32.608(1)(d)(iii) will result in continued inconsistency of licensure requirements for mental health centers. In addition, the client's ability to challenge decisions rendered by mental health centers will remain undefined, and linkages with resources that may be available to provide assistance and support may not be established.

The proposed amendment to ARM 16.32.608(2) expands the duties of the medical director of the mental health center. The amendment does not change the provision that the medical director may be either employed by or contracted with the mental health center, but it does establish the minimum responsibilities of the medical director, including, but not limited to directing psychiatric and medication management services. Other functions include evaluation and diagnosis, staff supervision and oversight, liaison with community medical staff and facilities, and participation in the mental health center's ongoing quality assurance process.

The language in ARM 16.32.608(2) is needed because the medical director must be integrally involved with the delivery of services offered by the mental health center. Medication management services have been identified in proposed Rule I as essential to the effective treatment of mental illness. The medical director's duties must be clearly defined in order to support a mental health center's medication management service.

The alternative to having the added provisions in ARM 16.32.608(2) would be to do nothing. This would continue the inconsistent and inadequate involvement of a licensed physician in the day-to-day operation of the mental health center. Essential mental health services, including medication management, would be inaccessible to large numbers of individuals with mental illness.

The proposed amendments to ARM 16.32.609 include changing the rule catchphrase from "Clinical Services" to "Policies and Procedures" to reflect the content of the rule. The content of the rule remains unchanged except for the proposal to delete ARM 16.32.609(1)(j), regarding medication management. Medication management is addressed in the newly-proposed Rule I.

The proposed amendments to ARM 16.32.610 modify terminology within the rule to reflect the intent of the department. The initial intake assessment required of a mental health center is a clinical assessment. When an individual no longer requires services from the mental health center, a discharge summary must be completed. The changes reflect terminology that is consistent with that used by other mental health providers. The

alternative to the changes proposed in ARM 16.32.610 is to do nothing, resulting in inconsistent terminology throughout the mental health service system.

The proposed amendments to ARM 16.32.615 clarify and expand the requirements for client assessments to include a narrative that substantiates the individual's diagnosis and provides sufficient information to individualize the treatment plan goals and objectives. The amendments expand the requirement for additional assessments to include chemical dependency evaluations, if appropriate. The amendments also require mental health centers to develop a list of providers that accept referrals for assessments when the mental health center does not provide the service.

These amendments improve the assessment process to result in improved diagnosis, planning, and treatment of individuals with mental illness. The alternative to amending ARM 16.32.615 is to do nothing, with the continued possibility of incomplete assessment and treatment planning.

The proposed amendments to ARM 16.32.616 include modifications to the requirements for individualized treatment plans developed by mental health centers. The amendment requires identification of the individuals who are involved in the client's treatment. The amendment establishes the requirement that the treatment plan must serve the client in the least restrictive and culturally appropriate environment, and as clinically indicated, preserve the client in the family unit, prevent out-of-community placement, assist in the return to the community for individuals in acute or residential treatment, and identify the transitional needs of older youth. The amendment clarifies the requirement for discharge criteria. The amendment defines the minimum participants in a treatment team meeting, and that multiple treatment plans must be integrated.

The proposed amendments will result in improved treatment planning and service delivery to clients of mental health centers. The alternative to amending ARM 16.32.616 is to do nothing. This would be legally, clinically, and fiscally irresponsible. The result would be continued fragmented treatment and inconsistent interpretation of departmental expectations and requirements.

The proposed amendments to ARM 16.32.617 change the terminology within this subsection from "client termination" to "client discharge", which is terminology used currently by other mental health providers. The alternative to amending ARM 16.32.617 would be to leave the language of "client termination", which is inconsistent terminology than what is used by mental health services.

Also, the amendment to ARM 16.32.617(2) adds that discharge summaries be completed within three months of the client's last

service when no formal discharge occurs. This flexible language was added to assist mental health centers whose clients leave without notice or are sporadic in attending services. Not having the amendment to ARM 16.32.617(2) would cause mental health centers to prematurely conduct discharge summaries for all clients within a month of a clients' cessation of services, even though the clients may use the services later. This would result in wasted resources and paperwork for mental health centers.

The proposed amendments to ARM 16.32.622(1) clarify the department's expectations for quality assessment within the mental health center. ARM 16.32.622(1)(a) provides uniform components of client satisfaction surveys which must be conducted annually. ARM 16.32.622(1)(b) and (c) establish requirements for maintaining records on seclusion and restraint, and procedures for reviewing the information for the purpose of identifying patterns and making program modifications when indicated.

The department believes that establishing minimum components of client satisfaction surveys will improve the surveys' usefulness to the mental health center's quality assessment programs. Furthermore, the expansion of the documentation requirements for use of seclusion and physical restraint, as well as the monitoring of incident reports, grievances, complaints, and medication errors, will result in an improved quality assessment program within each of the licensed mental health centers. The alternative to amending ARM 16.32.622 would be to do nothing, with the result of inconsistent and inadequate monitoring of program performance and program improvement.

The proposed amendment to ARM 16.32.640(2)(e) adds the requirement that mental health centers have policies and procedures for intensive case management programs, not just for the case managers themselves. This provision is added because the Department recognizes that some mental health centers have organized case management programs. The Department intends to have the programs abide by its requirements in ARM 16.32.640(2)(3)(i) through (vi), so that the programs are advocates for the clients. Not having the added language wiould ignore the realities that some mental health centers have organized case management programs, and it would excempt the programs from the Department's expectations of individual case managers.

The proposed amendments to ARM 16.32.644 clarify where child and adolescent day treatment programs are located, and the educational and staffing requirements for child and adolescent day treatment programs. The amendments also eliminate the term "program" for easier readability, as was done in the definition found at ARM 16.32.602(5).

With the expansion of child and adolescent day treatment

programs that has occurred since July 1999, combined with the implementation of mental health services within schools, the department recognizes there is a need to clearly define the locations of each type of service. The proposed amendment to ARM 16.32.644(2) requires that day treatment programs occur in a site-based location that is separate from the regular classroom. Without the proposed amendment, there may be continuing confusion over the distinction between day treatment and other mental health services provided within the school setting. Failure to clearly distinguish between the two types of services also results in inappropriate claims for reimbursement for services.

The amendment to ARM 16.32.644(2)(e) proposes to limit appropriate educational services, including special education, to a collaboration with a school district. The department believes that limiting collaboration between a mental health center and the public school district will facilitate the transfer of clients to a less restrictive setting when clinically indicated. Allowing youth and adolescent day treatment programs to employ their own educational staff or having an agreement with an educational agency outside of the public school district may not assist in transferring clients to less restrictive settings and may result in continued inconsistency in educational services provided to children and adolescents in day treatment programs state-wide.

The proposed amendment to ARM 16.32.644(5) seeks to address numerous requests by providers to clarify the department's expectations and requirements for staffing of day treatment programs. The proposed amendment delineates what the department believes to be the appropriate staff to client ratio, the hours a therapist works in the program, and the location of the therapist's office in relation to the day treatment classroom. Providers are currently operating with different ratios, depending upon their interpretation of the existing language in ARM 16.32.644(5). Without the proposed amendment, day treatment programs will continue to use different client to staff ratios and part time therapists. Continuing in this manner directly impacts the consistency of the quality of services provided to children and adolescents within the programs.

The amendments to ARM 16.32.645 propose minor changes in the terminology used in these two subsections, deleting "program" from references to adult day treatment and changing the reference to "crisis intervention and stabilization facilities" to "crisis stabilization program". The department believes that the changes improve the description of the service categories. No changes have been proposed in the substance of this rule other than the names of the services.

The amendment to ARM 16.32.650(2)(b)(ii) adds the requirement that personnel trained to man crisis telephone services also be trained in suicide risk assessment and prevention approaches.

Such training will improve this crisis telephone staff's ability to assess the immediate risk of suicide and the steps needed to help prevent it. The department feels that specific training in these areas will lead to better crisis services for clients. No other alternatives were considered when the Department drafted this proposal because the Department feels it is important to avert suicide crises. Changes to ARM 16.32.650(1) were minor grammatical changes for user readability.

The amendments to ARM 16.32.651 propose to change the term "crisis intervention and stabilization facility" to "crisis stabilization program", eliminating the terms "intervention" and "facility" from the program description. These changes were added to promote consistent terminology for all licensed mental health centers state-wide. The changes also lend to better readability of the rule.

The department proposes to repeal ARM 16.32.630 regarding license endorsements of mental health centers. The language is proposed to be transferred to ARM 16.32.607. The department felt combining the licensure requirements and license endorsements into one rule would result in better readability. To reflect the proposal to repeal ARM 16.32.630, the following rules contain language eliminating citations to ARM 16.32.630: ARM 16.32.640, 16.32.644, 16.32.645, 16.32.646, 16.32.650 and 16.32.651.

The direct financial impact on the department in implementing these rule changes is expected to be negligible, with the exception of proposed amendments to ARM 16.32.608 expanding the responsibility of mental health center medical directors for medication management. Requiring medical directors to have increased direct client interaction through medication management as well as assessment and treatment planning could increase the cost to the department for these services. However, the department acknowledges the need for increased access to physician services and believes that the increase in costs for physician services would result in improved and timely diagnosis, care, and treatment of individuals with mental illness.

Finally, the transfer of these rules is necessary because this program was transferred from the Department of Health and Environmental Science to the Department of Public Health and Human Services by the 1995 legislature by Chapter 546, Laws of Montana 1995.

8. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on November 8, 2001. Data, views or arguments may also be submitted by facsimile (406) 444-1970 or by electronic

mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

9. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State October 1, 2001.

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the proposed adoption of new rules I and II relating to the purchase of tax sale certificates	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 7, 2001, the department proposes to adopt new rules I and II relating to the purchase of tax sale certificates on property in Montana.

2. The Department of Revenue 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 Revenue no later than 5:00 p.m. on October 26, 2001, 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 number (406) 444-3696; e-mail address 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 DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Date of notice" means the actual date the party other than the person to whom the property was assessed mailed the written notice to the person to whom the property was assessed. This date must be at least two weeks prior to the date of payment of delinquent taxes, penalties, interest, and costs.

(2) "Notice" means the written document that informs the party to whom the property was assessed of a pending purchase of assignment of tax sale certificate by a party other than the party to whom the property was assessed.

(3) "Person to whom the property was assessed" means the owner of record of the property.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-17-212 and 15-17-323, MCA

REASONABLE NECESSITY: The department is proposing to adopt new rule I to define terms found in New Rule II.

NEW RULE II FORM (1) As required by 15-17-212 and 15-17-323, MCA, the form to notify the person to whom the property was assessed that another party plans to pay the delinquent taxes, penalties, interest and costs for that

property has been developed and provided to all county treasurers.

(2) Form number Cotreas-1, DOR-439, dated 6-01, titled "Notice of Pending Assignment" will be used by all county treasurers in Montana to comply with the requirements of the law.

(3) The form provided by the county treasurers appears as follows:

NOTICE OF PENDING ASSIGNMENT
(Pursuant to 15-17-212 and 15-17-323, MCA)

THIS NOTICE IS VERY IMPORTANT with regard to the purchase of the Tax Sale Certificate, which _____ County holds on the following property. If the delinquent taxes are not paid in full within 2 WEEKS from the date of this notice, an assignment of Tax Sale Certificate will be purchased. THIS COULD RESULT IN THE LOSS OF YOUR PROPERTY LISTED BELOW.

Please direct any questions to the _____ County Treasurer, or telephone (406) _____.

OWNER OF RECORD:

MAILING ADDRESS OF OWNER OF RECORD:

LEGAL DESCRIPTION:

PARCEL NUMBER:

GEOCODE(S):

DATE OF NOTICE:

_____
Signature of Interested Assignee

Cotreas-1
6-01
DOR 439

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-17-212 and 15-17-323, MCA

REASONABLE NECESSITY: The department is proposing to adopt new rule II to provide the form that will be distributed by the county treasurers to parties planning to purchase an assignment of tax sale certificate. Such interested parties are required to notify, by certified mail, the person who was last sent the tax bill on the property notice that if they do not bring the taxes, penalties, interest, and costs current, the property may be sold, within a specific period of time, to the party sending the form.

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

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

no later than November 9, 2001.

5. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than November 9, 2001.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee; from a governmental subdivision or agency; 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.

7. An electronic copy of this Proposal 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 Proposal 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.

8. 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 notice 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.

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

/s/ Cleo Anderson	**/s/ Kurt G. Alme**
CLEO ANDERSON	**KURT G. ALME**
Rule Reviewer	**Director of Revenue**

Certified to Secretary of State October 1, 2001

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 44.5.101 through 44.5.110, 44.5.112 and 44.5.113, adoption of new rules I through VIII and amendment of ARM 44.2.202 and 44.5.111 regarding filing and copy fees for corporations	)	NOTICE OF PUBLIC HEARING

TO: All Concerned Persons

1. On October 31, 2001, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room at room 260 of the State Capitol, Helena, Montana, to consider the proposed repeal of ARM 44.5.101 through 44.5.110, 44.5.112 and 44.5.113, adoption of new rules I through VIII and amendment of ARM 44.2.202 and 44.5.111 regarding filing and copy fees for corporations.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on October 24, 2001, to advise us of the nature of the accommodation that you need. Please contact Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2034; FAX (406) 444-3976; e-mail jdoggett@state.mt.us.

3. The rules proposed to be repealed follow:

44.5.101 FEES FOR FILING DOCUMENTS – BUSINESS CORPORATIONS found at pages 44-219 and 44-220, Administrative Rules of Montana

AUTH: Sec. 35-1-1202 and 35-1-1307, MCA
IMP: Sec. 35-1-1202 and 35-1-1206, MCA

44.5.102 LICENSE FEE FOR DOMESTIC OR FOREIGN PROFIT CORPORATIONS BASED ON AUTHORIZED SHARES found at page 44-220, Administrative Rules of Montana

AUTH: Sec. 35-1-1307, MCA
IMP: Sec. 35-1-1207, MCA

44.5.103 FEES FOR FILING DOCUMENTS - NONPROFIT CORPORATIONS found at pages 44-220 and 44-221, Administrative Rules of Montana

AUTH: Sec. 35-2-1001, and 35-2-1107, MCA

IMP: Sec. 35-2-1001, and 35-2-1103, MCA

44.5.104 MISCELLANEOUS CHARGES - PROFIT AND NONPROFIT CORPORATIONS AND LIMITED LIABILITY COMPANIES found at page 44-221, Administrative Rules of Montana

AUTH: Sec. 35-2-1002, 35-1-1307, 35-2-1107, and 35-8-211, MCA
IMP: Sec. 35-1-1206, 35-2-1001, 35-2-1003, 35-8-207, and 35-8-211, MCA

44.5.105 FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES - LIMITED PARTNERSHIPS found at pages 44-221 and 44-222, Administrative Rules of Montana

AUTH: Sec. 35-12-521, MCA
IMP: Sec. 35-12-521, MCA

44.5.106 MISCELLANEOUS CHARGES - LIMITED PARTNERSHIPS found at page 44-222, Administrative Rules of Montana

AUTH: Sec. 35-12-521, MCA
IMP: Sec. 35-12-521, MCA

44.5.107 FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES - ASSUMED BUSINESS NAMES found at pages 44-222 and 44-223, Administrative Rules of Montana

AUTH: Sec. 30-13-217, MCA
IMP: Sec. 30-13-217, MCA

44.5.108 MISCELLANEOUS CHARGES - ASSUMED BUSINESS NAMES OR LIMITED LIABILITY PARTNERSHIPS found at page 44-223, Administrative Rules of Montana

AUTH: Sec. 30-13-217, MCA
IMP: Sec. 30-13-217, MCA

44.5.109 FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES - TRADEMARKS found at page 44-223, Administrative Rules of Montana

AUTH: Sec. 30-13-311, 30-13-313, and 30-13-315, MCA
IMP: Sec. 30-13-311, 30-13-313, 30-13-315, and 30-13-320, MCA

44.5.110 MISCELLANEOUS CHARGES - TRADEMARKS found at page 44-223, Administrative Rules of Montana

AUTH: Sec. 30-13-311, 30-13-313, and 30-13-315, MCA
IMP: Sec. 30-13-311, 30-13-313, 30-13-315, and 30-13-320, MCA

44.5.112 FEES FOR FILING DOCUMENTS - LIMITED LIABILITY

COMPANIES found at page 44-225 and 44-226, Administrative Rules of Montana

44.5.113 FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES - LIMITED LIABILITY PARTNERSHIPS found at page 44-227, Administrative Rules of Montana

AUTH: Sec. 35-8-211, MCA
IMP: Sec. 35-8-104, 35-8-105, 35-8-202, 35-8-205, 35-8-208, 35-8-211, 35-8-906, 35-8-907, 35-8-1003, 35-8-1005, 35-8-1006, 35-8-1010, and 35-8-1201, MCA

4. The proposed new rules provide as follows:

I CORPORATIONS - PROFIT AND NONPROFIT FEES (1) Domestic filings:

(a) articles of incorporation	$ 20.00
(b) license fee based on authorized shares for profit corporations only, $20.00 plus:	
(i) 1 to 50,000 shares	50.00
(ii) 50,001, to 100,000 shares	100.00
(iii) 100,001 to 250,000 shares	250.00
(iv) 250,001 to 500,000 shares	400.00
(v) 500,001 to 1,000,000 shares	600.00
(vi) 1,000,001 shares and over	1000.00
(c) reinstatement:	
(i) for profit corporations, the fee is one half of the original per share filing fee as listed in (1)(b)(i) through (vi), plus the $20.00 filing fee, plus an additional fee of $30.00 per year for each year of delinquent annual reports	
(ii) for nonprofit corporations	10.00
(d) articles of correction	15.00
(e) articles of amendment	15.00
(f) restated articles	15.00
(g) articles of merger	20.00
(h) articles of dissolution	15.00
(i) domestic business trust	70.00
(j) articles of revocation of voluntary dissolution	15.00
(2) Foreign filings:	
(a) certificate of authority (for profit corporations, add $100 license fee)	20.00
(b) amended certificate of authority	15.00
(c) withdrawal	15.00
(d) registration of name (per year)	10.00
(e) renewal of name registration (per year)	10.00
(f) foreign business trust	120.00
(3) Both domestic and foreign filings:	
(a) name reservation	10.00
(b) transfer/cancellation of reserved name	no charge
(c) cancellation of foreign name registration	15.00
(d) statement of change of:	
(i) registered office	no charge

(ii) registered agent	no charge
(e) annual report filed prior to April 15th	15.00
(f) annual report filed after April 15th	30.00
(g) certificate of existence (domestic)	5.00
(h) certificate of authorization (foreign)	5.00
(i) certificate of fact	15.00
(j) any other statement or report	15.00

AUTH: Sec. 35-1-1307, 35-2-1107, MCA
IMP: Sec. 35-1-1206, 35-1-1207, 35-2-1003, and 35-6-201, MCA

II LIMITED LIABILITY COMPANY FEES (1) Domestic filings:	
(a) articles of organization	$70.00
(b) articles of correction	15.00
(c) articles of amendment	15.00
(d) restated articles	15.00
(e) articles of merger	20.00
(f) application for reviver	15.00
(g) articles of termination	15.00
(h) reinstatement of involuntarily dissolved limited liability company	35.00
plus an additional fee of $30.00 per year for each year of delinquent annual reports	
(2) Foreign filings:	
(a) certificate of authority	70.00
(b) amended certificate of authority	15.00
(c) withdrawal	15.00
(d) registration of name (per year)	10.00
(e) renewal of name registration (per year)	10.00
(3) Both domestic and foreign filings:	
(a) name reservation	10.00
(b) transfer/cancellation of name reservation	no charge
(c) statement of change of:	
(i) registered office	no charge
(ii) registered agent	no charge
(d) annual report filed prior to April 15th	15.00
(e) annual report filed after April 15th	30.00
(f) any other statement or report	15.00

AUTH: Sec. 35-8-211, MCA
IMP: Sec. 35-8-207, 35-8-211, and 35-8-212, MCA

III LIMITED LIABILITY PARTNERSHIP FEES	
(1) Registration of limited liability partnership	$70.00
(2) Renewal of registration	70.00
(3) Amendment to registration	20.00
(4) Reservation of name	10.00
(5) Cancellation of registration	5.00
(6) Filing of any other statement	15.00

AUTH: Sec. 30-13-217, MCA
IMP: Sec. 30-13-203, and 30-13-217, MCA

IV LIMITED PARTNERSHIP FEES (1) Both domestic and foreign filings:

(a) certificate of limited partnership	$20.00
(b) certificate of renewal of limited partnership	15.00
(c) amendment of limited partnership	15.00
(d) reservation of limited partnership name	10.00
(e) transfer of name reservation	no charge
(f) statement of change of:	
(i) registered office	no charge
(ii) registered agent	no charge
(g) correction or cancellation of limited partnership	15.00
(h) any filing not listed above	15.00

AUTH: Sec. 35-12-521, MCA
IMP: Sec. 35-12-521, MCA

V COOPERATIVE ASSOCIATIONS, AGRICULTURAL ASSOCIATIONS, COOPERATIVE AGRICULTURAL AUTHORITY, RURAL COOPERATIVE UTILITIES FEES

(1) Cooperative association:	
(a) articles of incorporation	$20.00
(b) any other articles	10.00
(2) Agricultural association:	
(a) articles of incorporation	20.00
(b) any other articles	10.00
(3) Agricultural marketing association:	
(a) articles of incorporation	40.00
(b) any other articles	10.00
(4) Rural cooperative utilities:	
(a) articles of incorporation	40.00
(b) any other articles	10.00

AUTH: Sec. 35-15-201, 35-15-205, 35-16-101, 35-17-205, and 35-18-502, MCA
IMP: Sec. 35-15-201, 35-15-205, 35-16-101, 35-17-205, and 35-18-502, MCA

VI ASSUMED BUSINESS NAME FEES

(1) Registration of assumed business name	$20.00
(2) Partnership agreement or statement of partnership authority	20.00
(3) Renewal of registration	20.00
(4) Amendment to registration	20.00
(5) Reservation of name	10.00
(6) Cancellation of registration	5.00
(7) Filing of any other statement	20.00

AUTH: Sec. 30-13-217, MCA
IMP: Sec. 30-13-217, and 30-13-320, MCA

VII TRADEMARK FEES

(1) Registration of mark	$20.00
(2) Renewal of mark	20.00

(3) Assignment of mark 20.00
(4) Cancellation of mark 20.00
(5) Filing any other statement 20.00

AUTH: Sec. 30-13-311, 30-13-313, and 30-13-315, MCA
IMP: Sec. 30-13-311, 30-13-313, 30-13-315, and 30-13-320, MCA

VIII MISCELLANEOUS FEES
(1) Certificate of fact $15.00
(2) Copy of any document 10.00
(3) Documents or copies returned by fax up to 10 pages 3.00
(a) each additional page over 10 .50
(b) priority handling for all other documents/requests 20.00
(c) furnishing any certificate not otherwise provided for 15.00

AUTH: Sec. 2-6-103, 30-9-403, and 35-1-1202, MCA
IMP: Sec. 30-9-403, 30-13-320, 35-1-1202, 35-1-1206, 35-2-1003, and 35-8-211, MCA

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

44.2.202 FEES FOR FACSIMILE TRANSMISSIONS OF DOCUMENTS (1) The secretary of state's office shall charge ~~three dollars ($3~~.00~~)~~ for the facsimile transmission of documents, 10 pages or less. Documents exceeding 10 pages shall cost ~~twenty-five cents ($.25)~~ $.50 for each additional page transmitted by facsimile machine to the requester.

(2) All fees must be paid prior to the transmission of the documents. Persons having accounts with the secretary of state's office shall have their fees charged to their account unless other acceptable arrangements have been made.

AUTH: Sec. 30-9-403 and 35-1-1202, MCA
IMP: Sec. 30-9-403 and 35-1-1202, MCA

44.5.111 FORMS (1) The following shall be the official mandatory forms as prescribed by the secretary of state. The forms are available at the Secretary of State's Office, State Capitol, Room ~~225~~ 260, PO Box 202801, Helena, Montana 59620-2801 or can be downloaded from:
http://sos.state.mt.us/css/BSB/Filing_Forms.asp

~~(1)~~ (a) Application for certificate of authority form number FC-4, shall contain the following information:

~~(a)~~ (i) The name of the corporation and the known in Montana name if it is different than the name of the corporation~~.~~;

~~(b)~~ (ii) If the name is not acceptable the corporation must adopt an assumed business name for use in Montana~~.~~;

~~(c)~~ (iii) The state in which the corporation was

incorporated.~~;~~

~~(d)~~ (iv) The date of incorporation and the period of duration.~~;~~

~~(e)~~ (v) The address of the principal office in the state of jurisdiction.~~;~~

~~(f)~~ (vi) The address of the registered agent in Montana and the name of the registered agent.~~;~~

~~(g)~~ (vii) The names and addresses of the directors and officers of the corporation.~~;~~

~~(h)~~ (viii) The purpose for which the corporation is transacting business in the state of Montana.~~;~~

~~(i)~~ (ix) If the corporation is a nonprofit corporation, does it have any members.~~;~~

~~(j)~~ (x) If the corporation is a nonprofit corporation which type of corporation it elects to be:

~~(i)~~ (A) public benefit~~,~~;

~~(ii)~~ (B) mutual benefit~~,~~; or

~~(iii)~~ (C) religious corporation.

~~(2)~~ (b) Application for amended certificate of authority of foreign corporation form number FCM-6, shall contain the following information:

~~(a)~~ (i) The date of the issuance of the certificate of authority and the name of the corporation the certificate of authority was issued to.~~;~~

~~(b)~~ (ii) The name of the corporation if the name has been changed.~~;~~

~~(c)~~ (iii) The period of the corporation's duration.~~;~~

~~(d)~~ (iv) The state or country of its incorporation.~~;~~

~~(e)~~ (v) If the corporation was involved in a merger or consolidation it must list the surviving corporation and its state of jurisdiction.~~;~~

~~(3)~~ (c) Application for withdrawal of a foreign corporation form number FC-10, shall contain the following information:

~~(a)~~ (i) The name of the corporation.~~;~~

~~(b)~~ (ii) The state of jurisdiction.~~;~~

~~(c)~~ (iii) The corporation is not transacting business and surrenders its certificate of authority.~~;~~

~~(d)~~ (iv) The corporation revokes the authority of its registered agent in Montana to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in Montana may thereafter be made on it by service thereof on the secretary of state of the state of Montana.~~;~~

~~(e)~~ (v) The mailing address to which the secretary of state may mail a copy of any process against the corporation.~~;~~

~~(f)~~ (vi) An assurance the corporation will notify the secretary of state of any change of its mailing address.~~;~~

~~(g)~~ (vii) If the corporation was involved in a merger it must list the surviving corporation and its state of jurisdiction and mailing address.~~;~~

~~(h)~~ (viii) If a profit corporation, it has paid all taxes imposed upon it by Title 15, ~~Montana Code Annotated~~ MCA, and must attach a certificate by the department of revenue to the

effect that the department of revenue is satisfied from the available evidence that all taxes imposed by Title 15, ~~Montana Code Annotated~~ MCA, have been paid.

~~(4)~~ (d) Montana annual corporate report form, shall contain the following information:

~~(a)~~ (i) The state of incorporation~~.~~;

~~(b)~~ (ii) Address of principal office in state of incorporation~~.~~;

~~(c)~~ (iii) Brief description of business in which corporation is actually engaged~~.~~;

~~(d)~~ (iv) Name of corporation~~.~~;

~~(e)~~ (v) Registered agent~~.~~;

~~(f)~~ (vi) Registered office address~~.~~;

~~(g)~~ (vii) Officers and their addresses~~.~~;

~~(h)~~ (viii) Directors and their addresses~~.~~;

~~(i)~~ (ix) Shares~~.~~;

~~(j)~~ (x) Shareholders names, addresses and number of shares for professional service corporations only.

~~(k) Property statement for foreign corporations only.~~

~~(l) Election of a nonprofit corporation to be a public benefit, mutual benefit or religious corporation (effective in 1995).~~

AUTH: Sec. 35-1-1307, MCA
IMP: Sec. 35-1-1308, MCA

6. These rules reorganize and simplify ARM 44.5.101 through 44.5.110, 44.5.112 and 44.5.113, which are proposed to be repealed. These rules reduce the number of rules governing corporations from twelve to eight and categorize fees according to business entity. These rules also modify several fees. The Secretary of State's fees, by state law, must be commensurate with overall office costs. The rule modifications streamline, standardize and clarify an assortment of fees. The filing fees in these new rules eliminate charges for statements of change, transfers, cancellations and copies of computerized printouts. These documents can be requested by a business at any time. This will streamline transactions with the secretary of state and decrease the number of business filings that are rejected by this office for failure to include the $5.00 fee that was required under the rules proposed to be repealed. At the same time, the fee for filing annual reports increases from $10.00 to $15.00. This will allow the Secretary of State's office to make up the loss incurred by eliminating the $5.00 and $1.00 fees and will generate revenue. This rule also consolidates all fees for filing late annual reports to a fee of $30.00. This eliminates a three-tiered fee schedule, encourages businesses to maintain current and accurate records, and will generate revenue. These rules also eliminate, consolidate and clarify charges for copies of instruments, documents and other papers for the Secretary of State's office. ARM 44.5.111 is proposed to be amended to remove (4)(k) and (l) since they are no longer statutorily required and to conform to current formatting requirements.

7. The cumulative amount of the increase for all fees and copies will be approximately $78,351.00 affecting approximately 53,525 entities.

8. 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 Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jdoggett@state.mt.us, and must be received no later than November 8, 2001.

9. Janice Doggett, address given in paragraph 8 above, has been designated to preside over and conduct the hearing.

10. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, e-mailed to klubke@state.mt.us, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ BOB BROWN
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 1st day of October, 2001

**BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 2.5.201, 2.5.202, 2.5.301, 2.5.302, 2.5.402, 2.5.406, 2.5.502, 2.5.505, 2.5.509, 2.5.601, 2.5.603 and 2.5.604, the adoption of New Rules I through III, and the repeal of ARM 2.5.403 concerning state procurement of supplies and services	) NOTICE OF AMENDMENT, ADOPTION,) AND REPEAL

TO: All Concerned Persons

1. On August 23, 2001, the Department of Administration published notice of the proposed amendment of ARM 2.5.201, 2.5.202, 2.5.301, 2.5.302, 2.5.402, 2.5.406, 2.5.502, 2.5.505, 2.5.509, 2.5.601, 2.5.603 and 2.5.604, adoption of new RULES I through III, and repeal of ARM 2.5.403 concerning state procurement of supplies and services at page 1498 of the Montana Administrative Register, Issue Number 16.

2. The Department of Administration has amended ARM 2.5.202, 2.5.301, 2.5.302, 2.5.402, 2.5.406, 2.5.502, 2.5.505, 2.5.509, 2.5.601, 2.5.603, and 2.5.604 exactly as proposed.

3. The Department has amended ARM 2.5.201 with the following changes, stricken matter interlined, new matter underlined:

2.5.201 DEFINITIONS

(1) through (21) remain exactly as proposed.

(20) through (25) remain the same, but are renumbered (22) through ~~(26)~~(27).

~~(27)~~ (28) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

~~(28)~~ (29) "Responsive bidder or offeror" means a person who has submitted a bid or offer that conforms in all material respects to the invitation for bids or request for proposals.

(28) through (30) remain the same, but are renumbered ~~(29)~~ (30) through ~~(31)~~ (32).

~~(32)~~ (33) "State procurement bureau" means that bureau of the division responsible for procuring or supervising the procurement of all supplies and services needed by the state.

(32) and (33) remain the same, but are renumbered ~~(33)~~ (34) and ~~(34)~~ (35).

~~(35)~~ (36) "Total contract value" means the initial contract period and any options to renew.

(34) through (36) remain the same, but are renumbered ~~(36)~~ (37) through ~~(38)~~ (39).

AUTH: Sec. 18-1-114 and 18-4-221, MCA
IMP: Sec. 18-4-221, MCA

COMMENT 1: A comment received noted an error in the renumbering.

RESPONSE 1: The Department amended the numbering to correct the error.

4. The Department has adopted New RULES II (2.5.608) and III (2.5.609) exactly as proposed. New RULE I (2.5.408) has been adopted with the following changes, stricken matter interlined, new matter underlined:

RULE I (2.5.408) RECIPROCAL PREFERENCE (1) Section 18-1-102, MCA, requires a state agency to apply a reciprocal preference to the bid of a nonresident bidder equal to the percent of the preference given to the bidder in the state or country in which the bidder is a resident. ~~Each of the following conditions must be met before a reciprocal preference is applied to a nonresident bidder:~~

~~(a) the lowest responsible and responsive bidder is from a state or country that gives a resident procurement preference;~~

~~(b) the next lowest responsible and responsive bidder is a Montana resident bidder as defined in 18-1-103, MCA. A resident bidder must complete a bidder affidavit at the request of the department to verify resident eligibility. This affidavit must be on file with the department before a bid award can be made;~~

~~(c) the item being purchased does not involve:~~

~~(i) a competitive sealed proposal process (request for proposal) as defined in 18-4-304, MCA and ARM 2.5.603;~~

~~(ii) a small purchase or limited solicitation as defined in 18-4-305, MCA, and ARM 2.5.603;~~

~~(iii) a cooperative purchase as defined in 18-4-401, MCA;~~

~~(iv) procurements involving services as defined in 18-4-123, MCA; or~~

~~(v) procurements involving federal funds obtained from the federal government, including term contracts, except in those cases where applicable federal statutes expressly mandate geographic preference.~~

~~(d) if it is determined that the nonresident bidder would receive a percentage preference in its resident state, that percent is added to the bid of the nonresident bidder; and~~

(2) A reciprocal preference is applied only to an invitation for bid for supplies, but only in the event that federal funds are not involved in the anticipated purchase. In addition, a reciprocal preference is only applied if it will benefit a Montana resident bidder as defined in 18-1-103, MCA.

~~(e)~~ (3) If it is determined that the lowest responsive and responsible bidder would receive a percent preference in its resident state, that percent is added to the bid of the nonresident bidder. ~~i~~If the nonresident bidder is still the lowest responsive and responsible bidder after the preference adjustment has been made, ~~and~~ the contract price is the price bid, not the adjusted price.

(4) A resident bidder must complete a bidder affidavit to verify resident eligibility. This affidavit must be on file with the department before a bid award can be made.

~~(2)~~ (5) The business name and federal identification number on the Montana resident affidavit must match the business name and federal identification number on the submitted bid documents in order to be considered for the application of reciprocal preference.

AUTH: Sec. 18-1-114 and 18-4-221, MCA
IMP: Sec. 18-1-102, MCA

COMMENT 2: The Department received comments from other state agencies recommending language changes to improve the clarity of the rule.

RESPONSE 2: The Department has amended the rule to improve clarity.

5. The following additional comment was received and appears with the Department's response:

COMMENT 3: A comment submitted on behalf of the State Administration and Veterans' Affairs Interim Committee expressed concern that the statements of reasonable necessity did not comply with the requirements of section 2-4-305(6)(b), MCA, in that they were lacking any statement of the "principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules." The commenter said this was particularly true of the statements provided for new RULES I through III.

RESPONSE 3: The Department disagrees. Our initial statements of reasonable necessity meet the requirements of section 2-4-305, MCA. The language of SB 90 made it clear that prior requirements had to be eliminated. It further made it clear that rules must be adopted and the rules we proposed followed the mandates of that legislation. The rules and their text are necessary because they were required by statute.

6. The agency has repealed ARM 2.5.403 as proposed.

AUTH: Sec. 18-1-114 and 18-4-221, MCA
IMP: Sec. 18-4-221, MCA

By: /s/ Barbara Ranf
BARBARA RANF, Director
Department of Administration

/s/ Dal Smilie
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State October 1, 2001.

**BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA**

In the matter of the adoption of new Rules I through VIII concerning state vehicle use) NOTICE OF ADOPTION

TO: All Concerned Persons

1. On August 9, 2001, the Department of Administration, Risk Management and Tort Defense Division, published notice of the proposed adoption of new RULES I through VIII, concerning state vehicle use at page 1386 of the 2001 Montana Administrative Register, Issue Number 15.

2. The agency has adopted new RULE I (2.6.201), new RULE II (2.6.202), new RULE VII (2.6.210), and new RULE VIII (2.6.214) as proposed, but with the inclusion of 2-17-424, MCA as an additional implementing cite.

RULE I (2.6.201) INTRODUCTION
(1) through (2) remain the same as proposed.
AUTH: 2-17-424, MCA
IMP: 2-9-201, 2-9-305, and 2-17-424, MCA

RULE II (2.6.202) DEFINITIONS As used in this sub-chapter, the following definitions apply:
(1) through (3)(d) remain the same as proposed.
AUTH: 2-17-424, MCA
IMP: 2-9-201, 2-9-305, and 2-17-424, MCA

RULE VII (2.6.210) CELL PHONE USE (1) through (2) remain the same as proposed.
AUTH: 2-17-424, MCA
IMP: 2-9-201, 2-9-305, and 2-17-424, MCA

RULE VIII (2.6.214) DISCIPLINE (1) remains the same as proposed.
AUTH: 2-17-424, MCA
IMP: 2-9-201, 2-9-305, and 2-17-424, MCA

3. The agency has adopted new RULE III (2.6.203), new RULE IV (2.6.204), new RULE V (2.6.205), and new RULE VI (2.6.209), with the following changes, stricken matter interlined, new matter underlined:

RULE III (2.6.203) AUTHORIZED DRIVERS AND USES
(1) through (1)(c) remain the same as proposed.
(d) a state employee may park a state vehicle overnight at the employee's residence if the employee must begin ~~or end~~ travel ~~outside the employee's normal work shift~~ the next day or if the employee is subject to emergency response, on-call, or other off-shift duty associated with state employment;
(e) through (j) remain the same as proposed.

(2) Any exception to the authorized drivers and uses requires the prior written approval of the risk management and tort defense division.

AUTH: 2-17-424, MCA
IMP: 2-9-201, 2-9-305, and 2-17-424, MCA

COMMENT 1: The rule language is vague and may allow almost any use of the vehicle.

RESPONSE 1: The Department of Administration has amended subsection (1)(d) and added subsection (2) of this rule to better facilitate state employees' ability to travel. The rule allows shopping for personal items while in travel status. In addition, employees who are in an overnight travel status may drive the vehicle for cultural, recreational, or leisure activities if the activity is within 30 miles of the employee's lodging, including parking outside of a casino, ball park, or shopping facility.

COMMENT 2: A wider variety of non-state employees should be allowed to drive state vehicles and the amount of authorized uses should be expanded. Authorized passengers and spouses supporting the state employee in carrying out ceremonial duties should be allowed to drive. Employees allowed to take vehicles home off shift should be allowed limited personal use on their way to and from work. It has been the practice of the university system to accept loaned vehicles from the private sector for the full-time personal and private use of some of its employees. This use should be continued.

RESPONSE 2: Subsection (2) has been added to allow prior approval of exceptions.

RULE IV (2.6.204) AUTHORIZED PASSENGERS AND USES

(1) Except as otherwise provided in this rule, the following individuals may ride as passengers in a state vehicle:

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

(2) Any exception to the authorized passengers and uses requires the prior written approval of the risk management and tort defense division.

AUTH: 2-17-424, MCA
IMP: 2-9-201, 2-9-305, and 2-17-424, MCA

COMMENT 3: Spouses supporting the state employee in carrying out ceremonial duties should be allowed to accompany state employees as passengers. In relation to allowing nursing infants as passengers, one agency commented that it does not allow any children to accompany an employee while in travel status.

RESPONSE 3: Subsection (2) has been added to allow prior approval of exceptions. Many agencies desire to accommodate the reasonable needs of nursing infants of their employees. This rule merely allows those infants to be passengers in state vehicles.

RULE V (2.6.205) DRIVER REQUIREMENTS

~~(1) Prospective and probationary employees required to drive as part of their job who have accumulated 12 or more conviction points according to the schedule specified in 61-11-203, MCA, over the most recent 36 months are deemed not qualified and may not be hired.~~

(2) through (7) remain the same as proposed, but are renumbered (1) through (6).

(7) The requirements specified in this rule apply to conviction points received after October 12, 2001.

(8) An agency has the authority to restrict employees otherwise authorized as drivers from using state vehicles when it knows they are unsafe drivers from means other than the accumulation of conviction points.

AUTH: 2-17-424, MCA
IMP: 2-9-201, 2-9-305, and 2-17-424, MCA

COMMENT 4: The rule should not mandate who an agency can employ, but rather should limit itself to who an agency can allow to operate a vehicle.

RESPONSE 4: The Department agrees and has eliminated subsection (1).

COMMENT 5: This rule imposes a higher standard for the drivers of state vehicles than is currently imposed by state law for other drivers.

RESPONSE 5: An employer is not required to allow people to drive who meet the lowest test possible. As a public employer, we have a duty to set a higher safety standard and one that is likely to create less liability for taxpayers.

COMMENT 6: The State Administration and Veterans' Affairs Interim Committee requested that a date be put in the rule from which the conviction points start being counted.

RESPONSE 6: The Department agrees and has added subsection (7), which sets the date of October 12, 2001, which is the effective date of this rule. The Department has also added subsection (8) because supervisors may be aware that otherwise authorized drivers are unsafe drivers, but have not accumulated many conviction points.

COMMENT 7: Who is responsible for keeping track of the accumulation of conviction points?

RESPONSE 7: This rule allows agencies broad discretion in how to capture driver safety information. Agencies may rely upon some method of driver self reporting of conviction points.

COMMENT 8: When operating a vehicle is a key portion of an employee's job, and the employee is restricted from driving a vehicle due to being an unsafe driver, that is tantamount to terminating the employee. Does this rule satisfy collective bargaining agreements "just cause" requirements for suspension and termination?

RESPONSE 8: The Department believes the decision to suspend, reassign, or terminate an employee's job duties should be left to each agency's discretion. The Department believes than an agency has "just cause" to terminate an employee for a poor driving record if vehicle use is an essential job function.

COMMENT 9: A comment received from the State Administration and Veterans' Affairs Interim Committee stated that the statement of reasonable necessity, concerning relying on conviction points to determine unsafe drivers, provided in the rule notice did not comply completely with the requirements of section 2-4-305(6)(b), MCA.

RESPONSE 9: The Department of Administration agrees in part and has chosen to eliminate subsection (1), which would have required agencies not to hire persons who have a high level of conviction points. The Department has striven to promulgate a series of rules that allow those carrying out the state's business to do so in a reasonable manner while ensuring that vehicle use is consonant with the state's needs. The Department believes that its original statement of reasonable necessity is adequate to support the rule as adopted. The particular approach the Department chose to limit state employee's vehicle use was by the accumulation of penalty points on their licenses. This is a reasonable method to restrict those drivers who have proven to be reckless, unsafe, or who exercised bad driving judgment, as is evidenced by the accumulation of penalty points on their licenses.

RULE VI (2.6.209) ALCOHOL AND DRUGS (1) No person under the influence of alcohol, illegal drugs, or improperly used prescription drugs may drive a ~~state~~ vehicle for state business.

(2) No person may drive a ~~state~~ vehicle for state business under the influence of any legally prescribed drug if that drug affects the person's ability to safely operate the vehicle.

(3) No person may have an alcoholic beverage container in the passenger compartment of a state-owned, leased, or loaned vehicle.

AUTH: 2-17-424, MCA
IMP: 2-9-201, 2-9-305, and 2-17-424, MCA

COMMENT 10: Alcoholic beverage containers should not be allowed in a state vehicle.

RESPONSE 10: The Department amended subsections (1) and (2) for clarity and added subsection (3) to prohibit open alcoholic beverage containers in the passenger compartment of a state-owned, leased, or loaned vehicle.

4. The following additional comments were received and appear with the Department of Administration's responses:

COMMENT 11: A comment received from the State Administration and Veterans' Affairs Interim Committee stated that section 2-17-424, MCA, should be cited as an implementation section as well as the authorizing section for the rules.

RESPONSE 11: The Department of Administration concurs and will use section 2-17-424, MCA, as an additional implementation section for each of the rules.

COMMENT 12: The use of the term "non-state" employee was confusing.

RESPONSE 12: The terms "employee" and "state" are defined in section 2-9-101, MCA. The Department of Administration believes that the statutory definitions are sufficiently clear to distinguish between a "state" employee and "non-state" employee.

COMMENT 13: Committee, council, and board members should not be included within the definition of state employee in this rule.

RESPONSE 13: The Department of Administration believes that the same set of rules should apply to all persons driving state-owned, leased, or loaned vehicles.

COMMENT 14: These rules should not apply to vehicles loaned to the state.

RESPONSE 14: A comprehensive vehicle use policy should cover the use of any vehicle utilized by the State. The Department has always considered "loaned" vehicles as "leased" vehicles since their use is governed by verbal or written contracts between the universities and the owners.

COMMENT 15: Why was a separate restriction on cell phone use set out when there are other distractions in the vehicle, including the nursing of infants or the use of cigarettes?

RESPONSE 15: The rule limits actions that would tend to distract drivers from the safe operation of a motor vehicle. Cell phone usage was highlighted because it is an increasing

cause of distraction and accidents. While nursing infants are allowed as passengers in state vehicles, they must be secured in a car seat while the vehicle is in motion.

By: /s/ Barbara Ranf
BARBARA RANF, Director
Department of Administration

/s/ Dal Smilie
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State September 26, 2001.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of a new rule for the administration of the 2001 Treasure State Endowment Program (TSEP)	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On July 5, 2001, the Department of Commerce published a notice of a public hearing on the proposed adoption of the above-stated rule at page 1173, 2001 Montana Administrative Register, issue number 13.

2. The Department has adopted Rule I (ARM 8.94.3807) exactly as proposed. However, in response to a comment received prior to the commencement of the official comment period, the Department has modified the Manual adopted by reference to reduce from five percent to two percent the portion of a TSEP grant the Department will retain pending conditional closeout of a project. This change brings the TSEP retainage provision into conformance with that of the Community Development Block Grant Program which the Department also administers.

3. No comments or testimony were received.

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

By: /s/ Richard M. Weddle
Staff Attorney
Department of Commerce

By: /s/ Richard M. Weddle
Rule Reviewer

Certified to the Secretary of State, October 1, 2001.

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

In the matter of the adoption of new rule I through IV, amendment of ARM 12.9.601, 12.9.602, 12.9.604, 12.9.605, 12.9.701, 12.9.702, 12.9.703, 12.9.704, and 12.9.705, and the repeal of ARM 12.9.603 pertaining to the upland game bird release program	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 6, 2001, the Department of Fish, Wildlife and Parks (department) published a notice at page 1725 of the 2001 Montana Administrative Register, Issue Number 17, of the adoption and amendment of the above-captioned rules pertaining to the upland game bird release program.

2. The reason for the correction is the subsections in ARM 12.9.602 were earmarked incorrectly in the adoption notice. Earmark (1)(j) was actually a subsection of (1)(i) and should have been marked small roman numeral (i). The corrected rule amendment reads as follows:

12.9.602 REQUIREMENTS OF PROJECTS INVOLVING PHEASANT RELEASES (1) The department will not authorize participation in the upland game bird release program for pheasants unless the proposed project meets the following requirements:

(a) through (h) remain as proposed.

(i) within one mile of each release habitat must be available that consists of at least 10% permanent winter cover as described in ARM 12.9.615(2), 25% idle cover such as undisturbed residual vegetation 10 or more inches high and 10% food sources, such as cultivated grain, to be considered for authorization;

~~(j)~~ (i) conservation reserve grass-legume planting may be considered as idle cover provided the planting has not been mowed or grazed by livestock in the preceding 12 month period~~:~~.

(j) through (l)(iii) remain the same~~, but are renumbered (k) through (m)(iii)~~.

(m) sites will be inspected by department personnel to determine the number of birds that may be released. This number will be determined by:

(i) the required habitat component (winter cover, idle cover, food sources) that occupies the fewest acres within one mile of the site release; and

(ii) the number of birds that the area will support assuming one bird will require approximately three acres of habitat within a one-mile radius of the release site and there is a 60% mortality rate of released birds;

(n) banding of birds will be required in specified study areas and will be done by the department prior to release;

(o) all releases must be verified at the time of release by a department employee who will submit the verification form signed by the landowner for payment to the landowner or their designee;

(p) sites may be stocked for a period of five consecutive years. If a viable population is not established during that period, the department will no longer consider the site as being capable of supporting populations and will not fund any additional releases unless habitat changes are made that would make the site more suitable for the establishment of a viable population; and

(q) in the case of extreme weather conditions, the department will evaluate the area pursuant to ARM 12.9.615 to determine if the department will authorize the continued stocking of sites currently being used for an additional five years.

(2) For good cause shown, the department may waive any requirement listed in (1).

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

3. Replacement pages for the corrected notice of adoption were submitted to the Secretary of State on September 28, 2001.

By: /s/ Christian Smith
Christian Smith, Chief of Staff
Fish, Wildlife and Parks

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

Certified to the Secretary of State October 1, 2001

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

In the matter of the amendment of ARM 17.8.302 and 17.8.340, pertaining to emission guidelines for existing small municipal waste combustion units	**NOTICE OF AMENDMENT** **(AIR QUALITY)**

TO: All Concerned Persons

1. On June 7, 2001, the Board of Environmental Review published a notice of the proposed amendment of the above-stated rules at page 931, 2001 Montana Administrative Register, issue number 11. The hearing was held on July 12, 2001.

2. The Board has amended ARM 17.8.302 and 17.8.340 exactly as proposed.

3. No comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

By: *Joseph W. Russell*
**JOSEPH W. RUSSELL, M.P.H.,
Chairman**

Reviewed by:

David Russoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State October 1, 2001.

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

In the matter of the amendment of ARM 17.8.514, pertaining to air quality open burning fees	**NOTICE OF AMENDMENT (AIR QUALITY)**

TO: All Concerned Persons

1. On June 7, 2001, the Board of Environmental Review published a notice of the proposed amendment of the above-stated rule at page 928, 2001 Montana Administrative Register, issue number 11. The hearing was held on July 10, 2001.

2. The Board has amended ARM 17.8.514 exactly as proposed.

3. No comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

By: *Joseph W. Russell*
**JOSEPH W. RUSSELL, M.P.H.,
Chairman**

Reviewed by:

David Russoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State October 1, 2001.

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

In the matter of the amendment of ARM 17.58.336 pertaining to reimbursement of claims	)	NOTICE OF AMENDMENT
	)	(Petroleum Tank Release Compensation Board)

TO: All Concerned Persons

1. On August 9, 2001, the Petroleum Tank Release Compensation Board published notice of public hearing on proposed amendment of ARM 17.58.332 at page 1396 of the 2001 Montana Administrative Register, Issue No. 15.

2. The Board has amended ARM 17.58.336 as proposed with the following changes:

17.58.336 REVIEW AND DETERMINATION OF CLAIMS FOR REIMBURSEMENT (1) through (6) remain as proposed.

(7) Except as provided in ~~(8)~~ (10), claims subject to the provisions of 75-11-308(3), MCA, ~~may~~ must be paid pursuant to the following schedule:

Period of Noncompliance	Percent of allowed claim to be reimbursed
1 to 30 days	90%
31 to 60 days	75%
61 to 90 days	50%
91 to 180 days	25%
greater than 180 days	no reimbursement

(a) The period of noncompliance begins on the date ~~the department places a notice~~ of a violation letter that is sent by the department by certified mail to an owner or operator~~. in the mail, and t~~The period of noncompliance ends on the date the department determines that all violations identified in the ~~notice of~~ violation letter are corrected. The department shall indicate, by letter sent by certified mail to the owner or operator, the date that the violations were corrected.

(b) Reimbursement of claims submitted after issuance of a ~~notice of~~ violation letter ~~is sent shall~~ must be suspended until all violations are corrected as indicated by a certified letter from the department indicating compliance. After the owner or operator comes into compliance as indicated by the department, the board shall determine the appropriate rate of reimbursement at its next regularly scheduled meeting. Claims submitted ~~for work performed~~ prior to the issuance of a ~~notice of~~ violation letter are not suspended and must be reimbursed or denied pursuant to (1) through (6).

(8) A violation letter is one that is issued by the department to an owner or operator who has failed to remain in

compliance. The violation letter must be signed by a division administrator and indicate on it that it is a violation letter being issued pursuant to this rule. The violation letter shall notify the owner or operator of the specific statute(s) or rule(s) alleged to be violated and the action(s) to be taken that correct the violation(s). For purposes of determining the percentage reimbursed under (10) of this rule, the board may review the circumstances of the department's issuance of a violation letter, including those relating to whether a violation occurred, whether a violation was corrected, and when a violation was corrected.

(9) The provisions of (7), (8), (10) and (12) apply only when a release has been discovered and eligibility has been determined by the board, but the owner or operator fails to remain in compliance as required by 75-11-308(1)(e) and (1)(f), MCA.

~~(8)~~(10) The percentages of reimbursement set forth in (7) ~~are guidelines and~~ may be adjusted by the board ~~based on the specific facts of a given situation.~~ according to the procedures in (6) upon a showing by the owner or operator that one or more of the following factors applies and would entitle the owner or operator to an adjustment:

(a) the noncompliance has not presented a significant increased threat to public health or the environment;

(b) there has been no significant additional cost to the fund;

(c) the delay in compliance was caused by circumstances outside of the control of the owner or operator;

(d) there was an error in the issuance of the violation letter or in the determination of the date a violation was corrected or whether a violation has been corrected; or

(e) any other factor that would render use of the reimbursement schedule in (7) demonstrably unjust.

(9) remains as proposed, but is renumbered (11).

~~(10)~~(12) ~~Any~~ With the exception of the timeframes set forth in (7) of this rule, any other time periods specified in this rule may be extended by agreement between the board and the owner or operator.

AUTH: 75-11-318, MCA
IMP: 75-11-309, MCA

3. The Board received the following comments (Board responses follow each comment):

Comment # 1: The Board commented that the language of the amendment should define a violation letter and state the circumstances in which the amendments apply for better guidance to the owner or operator. The Board also determined that it is necessary to clarify the circumstances in which the amount reimbursed could be adjusted in percentages other than as specified in the table.

Response: See the rule language in (8) through (10).

Comment # 2: The Department of Environmental Quality stated that the Legislature has required in HB 462 that the Board establish the criteria for and rate of reimbursement and discretion in the rule with language such as "may" and "guidelines" fails to implement the requirement for setting the criteria for and rates of reimbursement.

Response: The statute uses the language, "all suspended and future claims may be reimbursed according to criteria established by the Board. In determining the amount of reimbursement, if any, the board may consider the effect and duration of the noncompliance." The criteria and rates of reimbursement are discretionary and set by the Board. It is not discretionary under the statute to suspend reimbursement of claims if an owner or operator fails to remain in compliance. The proposed rule has been modified to clarify that the timeframes in (7) are binding unless the board adjusts them based on the criteria in (10). The reference to "guidelines" has been deleted, together with other language that suggested that the Board could depart from its reimbursement criteria.

Comment # 3: The Department suggests that the Board include language that clearly states the applicable reimbursement rates will be applied except in certain designated cases leaving discretion to the Board regarding those cases.

Response: The language in the amendments suggested by the Department has been added to the rule.

Comment # 4: The Department suggests that the rule state that the owner or operator has the burden of proof to "provide substantial evidence" that its noncompliance has resulted in the circumstances stated in the rule. The requirement in (10) for a "showing" by the owner or operator that one or more of the factors applies and that the factors would "entitle him to an adjustment" indicates that the owner or operator must present adequate evidence to justify reimbursement.

Response: Since this is not an administrative contested case hearing, it does not seem appropriate to establish the burden of proof or a standard of proof.

Comment # 5: The Department suggests that a definition of "violation letter" be provided.

Response: A definition of violation letter was added in (8) along the lines of the language suggested by the Department.

Comment # 6: The Department suggests that there be an applicability clause. The Department writes that in order to receive reimbursement for claims, an owner or operator must first be determined to be eligible and that the proposed rule only applies to situations where an owner or operator is

determined eligible and then fails to remain in compliance as required by Mont. Code Ann. 75-11-308(1)(e) and (1)(f). Eligibility, the Department writes, is only determined with regard to compliance at the time the release is discovered.

Response: The Board agrees and has adopted language in (9) which reflects these suggestions.

Comment # 7: The Department suggests that the rule be specific about the process for determination of reimbursement rates by the Board when the Department determines an owner or operator has come back into compliance.

Response: This suggestion was incorporated into (7)(b) of the rule language where it is stated that the Board shall determine the appropriate rate of reimbursement at its next regularly scheduled meeting.

Comment # 8: The Montana Petroleum Marketers Association (MPMA) supports the proposed schedule of reimbursements set forth in the new rule language. The MPMA stated that a violation letter issued by the Department should be appealable.

Response: Since the Department does not routinely issue Notices of Violation for the failure to comply with the operation and maintenance requirements for underground storage tanks or the failure to properly conduct corrective actions, the appropriate trigger for notification of noncompliance is a violation letter. The rule language in (8) and (10) allows the Board to review the circumstances of the department's issuance of a violation letter.

Comment # 9: The MPMA supports the proposed language that provides for the suspension of reimbursement after a notice of violation has been sent.

Response: The Board thanks the MPMA for its comment.

Comment # 10: The MPMA supports language that gives the Board discretion in applying the schedule of reimbursements set forth in (7). The MPMA cites the example that there could be an error by the Department in determining when a violation had been corrected.

Response: As set out in (8) and (10)(d), the Board may use its discretion in adjusting the reimbursement based upon an error in the issuance of a violation letter or a letter determining whether or when a violation has been corrected.

Comment # 11: Town Pump comments that it prefers the use of the term "Notice of Violation" because it is unclear what a violation letter is and what safeguards exist for an owner or operator who receives a violation letter. Town Pump states

that a Notice of Violation is a clearly defined document with an established procedure for administrative review of the Department's position.

Response: See the response to Comment # 5 and Comment # 8.

Comment # 12: Town Pump suggests that the Board retain the discretion to adjust the reimbursement rates set forth in the rule.

Response: Under the amendments, the Board does have the discretion to adjust the reimbursement rates.

Comment # 13: Town Pump suggests that there should be no restriction on the Board's discretion based upon whether there was a perceived threat to the environment or increased cost to the fund because all releases result in an impact to the environment or an increased cost to the fund.

Response: The Board considers it important to list in (10) the factors that come into play when the Board is determining whether there should be a deviation from the reimbursement rate schedule so that all interested persons and the Board have objective standards for making an adjustment.

Comment # 14: Integrated Geoscience, Inc. (IGI), comments that the proposed rule does not define a violation letter or explain how the Department will administer the violation notices. IGI states that the term could mean any letter sent to an owner or operator by any staff member referencing a violation. IGI states that a first class letter sent by any DEQ staff member citing a violation could be considered a "violation letter." An owner or operator may not realize the degree of urgency contained in a Department first class letter and could unintentionally delay response.

Response: The Board agrees that the violation letter should be defined and has provided a definition in (8) which addresses these concerns.

Comment # 15: IGI comments that there should be an administrative appeal process associated with a violation letter.

Response: The Board agrees that an improperly issued violation letter could unfairly impact the amount of reimbursement under the schedule. Therefore, the Board has included in (8) and (10)(d) language which allows the board to review, for purposes of making reimbursement, the circumstances of the department's issuance of a violation letter, including circumstances relating to whether a violation occurred, whether a violation was corrected, and when a violation was corrected.

Comment # 16: IGI recommends that a violation letter be deemed a "Notice of Violation" because NOV's are legally recognized in the formal administrative process and there are appeal rights attached to an NOV.

Response: See response to Comment # 8.

PETROLEUM TANK RELEASE COMPENSATION BOARD

BY: */s/ TIM HORNBACHER*
TIM HORNBACHER, CHAIR

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

Certified to the Secretary of State October 1, 2001.

**BEFORE THE BOARD OF LAND COMMISSIONERS
AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 36.25.110, amending the minimum rental rate for grazing leases under the jurisdiction of the State Board of Land Commissioners	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 10, 2001, the Board of Land Commissioners and the Department of Natural Resources and Conservation published notice of the public hearing on proposed amendment of ARM 36.25.110, at page 756, of the 2001 Montana Administrative Register, Issue Number 9.

2. The agency has amended ARM 36.25.110 exactly as proposed.

AUTH: 77-1-106, 77-1-209, MCA
IMP: 77-1-106, 77-6-202, 77-6-502, 77-6-504, 77-6-507, MCA

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

COMMENT 1: The current formula using the average price per pound of beef cattle results in fair market value.

RESPONSE 1: The proposed changes continue to use the price per pound of beef cattle in Montana to calculate the rental rate. The multiplier used would increase from 6.71 to 7.54. Rental rates would continue to fluctuate with cattle prices.

COMMENT 2: Grazing rates increased 31% between 2000 and 2001. The proposed multiplier would increase the rates an additional 13%. No other rates have increased this amount.

RESPONSE 2: The rise in grazing rates between 2000 and 2001 was 18.5%, and was a result of increased cattle prices. In previous years, there have been similar drops in rates because of declining cattle prices. For example, between 1996 and 1997, the rate dropped 20.5%. The proposed multiplier is an increase of 12.4% over the current 6.71 multiplier, and a 25.7% increase from the 6 multiplier.

Regarding other lease rates, because of a Supreme Court ruling that cabin and homesite leases were below market value, the percentage value used to calculate their rental rate was recently increased 42.9%.

COMMENT 3: Grazing leases rates on private lands can not be used to determine rates for state lands because all improvements are paid for by the lessee.

RESPONSE 3: The proposed multiplier was calculated by the State Land Board Advisory Council by taking into account the requirements and services provided in a state lease in comparison to private leases. Adjustments were made for costs that lessees must incur for weed control, fencing, and water developments.

COMMENT 4: Many lessees use a rest rotation system and don't always use the AUMs they pay for each year.

RESPONSE 4: The proposed multiplier takes into account that on average, a lessee will not be able to utilize the lease for one year during the term. The State Land Board Advisory Council heard many comments and discussions regarding this point. They recognized that some leases are used every year, some have one year of deferral, and others might have more than one. They concluded that one year of nonuse was an equitable adjustment across the board for all leases.

COMMENT 5: Leases without water should be valued different than those with water.

RESPONSE 5: The proposed multiplier has been adjusted to account for a lessee's costs associated with providing water on state leases.

COMMENT 6: An increased fee during the current drought would further stress producers who are struggling to survive. Livestock are being shipped out of state because of pasture conditions.

RESPONSE 6: The proposed multiplier would be implemented only as leases are renewed. Existing leases would continue to use the multiplier currently in effect. This roll in will take ten years to fully implement, and will allow lessees to continue with the multiplier the lease was issued under, until renewal.

COMMENT 7: It is impossible for young people to start out and make a living in agriculture. Rural communities are losing their population and tax base.

RESPONSE 7: While the Department acknowledges these comments, they are outside the scope and consideration of this action.

COMMENT 8: If prices are raised, the leases will be dropped, which will reduce income to the schools.

RESPONSE 8: The long term effect of implementing a new rental is unknown. However, the rental increase which was adopted by

the Land Board in 1995 has not resulted in an increase in vacant tracts. Additionally, the Department continues to annually receive competitive bids in excess of the proposed rate.

COMMENT 9: Continuing increases discourage capital improvement and stewardship of the land.

RESPONSE 9: As mentioned above, the proposed multiplier considers most of the major expenses with operating a state lease, including fencing, water developments, weed control and non use. Additionally, the lessee can recapture the depreciated value of the improvements if the lease is transferred to another party.

COMMENT 10: State leases are based on a "take half and leave half" theory, which actually doubles the cost of the lease.

RESPONSE 10: The carrying capacity which is established by Department staff reflects what a lessee is authorized to use, not what can be used.

COMMENT 11: Leases in north central and eastern Montana can not be compared to western Montana.

RESPONSE 11: By law, the minimum rental rate is to be used for all leases, regardless of location. Establishing rates based on location is beyond the scope of this rulemaking. However, in evaluating and establishing carrying capacity for leases, range guides specific to various areas of the state are used.

COMMENT 12: State leases are often overrated in carrying capacity.

RESPONSE 12: The Department uses range guides published by the Natural Resource Conservation Service to assist in setting the animal unit month carrying capacity for leases. Since leases are generally inspected only once during the term, Department staff are generally conservative in establishing a carrying capacity. This is done to ensure the long term protection of the resource. Additionally, the Department often finds that there is confusion between animal unit and animal unit month when discussing the carrying capacity of leases.

COMMENT 13: If there is an increase in fees, the lease term should be longer to add stability to the operation.

RESPONSE 13: Under Montana's Enabling Act and state law, grazing and ag leases can only be for terms of five or ten years.

COMMENT 14: All costs associated with the operation of the

lease must be paid for by the lessee, including fire suppression, weed control, improvements and nonuse.

RESPONSE 14: As was previously discussed, the proposed multiplier takes into account that these costs must be borne by the lessee.

COMMENT 15: All costs associated with ranching and operation of leases have continued to increase.

RESPONSE 15: While the Department acknowledges this comment, the Land Board is charged with ensuring that full market value is received. Based on the Advisory Council's work, the Department believes that a multiplier of 7.54 represents full market value for state grazing leases.

COMMENT 16: State land lessees must contend with the problems of recreational use by the public.

RESPONSE 16: The proposed multiplier has been adjusted to recognize that legally accessible state lands are open to the public for recreational use.

COMMENT 17: The state should try to block up its land and implement a system of base property such as the BLM and Forest Service.

RESPONSE 17: The Land Board exchange policy does encourage consolidation of state lands. However, implementing a system of base property is beyond the scope of this rulemaking.

COMMENT 18: The cost of the leases should be based on an operator's ability to pay while remaining profitable.

RESPONSE 18: The Department is restricted to the method set in state law for establishing minimum rental rate. Changing this method is beyond the scope of this rulemaking.

COMMENT 19: Most state tracts are isolated and not viable units, and are not usable to anyone other than the surrounding landowners.

RESPONSE 19: The Department has found by competitive bidding that when legal access exists, parties other than those adjacent to the state land are willing to submit bids for the lease and incur the costs associated with fencing or water developments.

COMMENT 20: Grazing fees must have a direct correlation to forage production. If you halve forage production, you have an 100% increase in fees.

RESPONSE 20: The carrying capacities established for state leases are generally conservative so that in most years, the

lease can be grazed at that level without long term damage to the resource. The proposed multiplier also accounts for a year of nonuse during the lease term.

COMMENT 21: Grazing rentals are due in on March 1 each year, before there is forage production or the grazing season begins. The billing should be similar to crop payments.

RESPONSE 21: The due dates and method for payment of grazing rentals are established in state law and beyond the scope of this rulemaking.

COMMENT 22: More money could be generated for schools by raising the rates for bison grazing on state land.

RESPONSE 22: The requirement to use beef cattle prices to establish a minimum rental rate for all leases is established by state law. Using bison or any other livestock prices is beyond the scope of this rulemaking. The number of bison or other alternative livestock on state leases is less than 5%.

COMMENT 23: Ranchers provide other support for schools by paying property and equipment taxes.

RESPONSE 23: While the Department acknowledges this comment, the Land Board is charged with ensuring that full market value is received for grazing on state leases.

COMMENT 24: State Grazing Districts are playing less of a role in promoting good conservation of rangeland resources. The Department should explore opportunities to improve the effectiveness of the grazing districts.

RESPONSE 24: The Department acknowledges this comment, but it is outside of the issues being considered in this rulemaking.

COMMENT 25: Rental rate increases are often simply the result of other agencies raising their rates. This results in a never ending upward cycle.

RESPONSE 25: The current review of grazing rates was initiated by petition from the MonTRUST organization. That petition was not based on any other state or federal rates being charged for grazing.

COMMENT 26: Supports the proposed rate in light of the MonTRUST petition.

RESPONSE 26: The Department acknowledges this comment.

COMMENT 27: Some groups are trying to remove all livestock grazing from public lands.

RESPONSE 27: To the Department's knowledge, the petition

submitted by MonTRUST was solely based on the issue of full market values for grazing leases and not an attempt to remove livestock from state lands.

COMMENT 28: The 10% reduction for nonuse is not enough.

RESPONSE 28: The advisory council which established the multiplier, heard many comments and discussions regarding this point. They recognized that many leases are used every year, while others have some component of nonuse. They concluded that one year of nonuse was an equitable adjustment across the board for all leases.

COMMENT 29: Private lease rates are not an accurate reflection of what realistically can be paid for grazing. They are generally a result of the drought, emergency or spot conditions.

RESPONSE 29: While the Department acknowledges that private rates may rise during times of pasture shortages, these numbers also include the typical lease arrangements whereby entire ranches are leased out for both short and long term periods. The Department believes these types of leases are sustainable and economical for producers.

COMMENT 30: The rate charged for state leases should be similar to the formula used by the BLM and Forest Service which account for income and costs.

RESPONSE 30: The method for establishing the minimum grazing rate on state lands is set by state law. Changing the method is beyond the scope of this rulemaking. In addition, state land leases have a different mandate to generate full market value than the BLM or USFS permits do.

COMMENT 31: Implementing a fee increase at the time of high cattle prices will compound rate increases.

RESPONSE 31: The formula established by law is based on the premise the rental should increase at times when higher prices are received by producers. The proposed multiplier would be implemented over a ten year period as leases expire. Consequently only 10% of all leases will be affected during the next billing cycle, and 10% more each successive year.

BOARD OF LAND COMMISSIONERS

By: /s/ Judy Martz
JUDY MARTZ
Chair

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: /s/ Arthur R. Clinch
Arthur R. Clinch
Director

By: /s/ Donald D. MacIntyre
Donald D. MacIntyre
Rule Reviewer

Certified to the Secretary of State October 1, 2001.

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

In the matter of the amendment of ARM 37.70.304, 37.70.305, 37.70.311, 37.70.401, 37.70.402, 37.70.406, 37.70.407, 37.70.408 and 37.70.601 and the repeal of 37.70.301 and 37.70.902 pertaining to the low income energy assistance program (LIEAP)	))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Interested Persons

1. On August 9, 2001, the Department of Public Health and Human Services published notice of the proposed amendment and repeal of the above-stated rules at page 1453 of the 2001 Montana Administrative Register, issue number 15.

2. The Department has amended ARM 37.70.304, 37.70.305, 37.70.311, 37.70.401, 37.70.402, 37.70.406, 37.70.407 and 37.70.408 and repealed ARM 37.70.301 and 37.70.902 as proposed.

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

<u>37.70.601 BENEFIT AWARD</u> (1) The benefit matrices in (1)(c) and (1)(d) are used to establish the benefit payable to an eligible household for a full winter heating season (October thru April). The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.

(a) and (b) remain as proposed.

(c) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	$ ~~474~~	$ ~~464~~	$ ~~774~~	$ ~~538~~	$~~325~~	$~~257~~
	302	350	515	356	220	174
TWO	~~689~~	~~674~~	~~1,125~~	~~782~~	~~472~~	~~374~~
	439	509	749	517	320	253
THREE	~~938~~	~~919~~	~~1,532~~	~~1,066~~	~~644~~	~~510~~
	598	693	1,021	704	435	345
FOUR	~~1,291~~	~~1,264~~	~~2,108~~	~~1,446~~	~~886~~	~~701~~
	823	953	1,404	969	599	474

(ii) MULTI-FAMILY

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	$ ~~401~~	$ ~~392~~	$ ~~654~~	$ ~~572~~	$~~274~~	$~~217~~
	255	296	436	378	186	147
TWO	~~603~~	~~591~~	~~985~~	~~861~~	~~413~~	~~327~~
	384	445	656	569	280	221
THREE	~~885~~	~~867~~	~~1,446~~	~~1,264~~	~~607~~	~~480~~
	564	654	963	835	410	325
FOUR	~~1,034~~	~~1,012~~	~~1,689~~	~~1,476~~	~~709~~	~~561~~
	659	764	1,125	976	479	379

(iii) MOBILE HOME

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	$~~399~~	$~~391~~	$ ~~652~~	$ ~~475~~	$~~274~~	$~~217~~
	254	295	434	314	185	147
TWO	~~584~~	~~571~~	~~953~~	~~695~~	~~400~~	~~317~~
	372	431	635	459	271	214
THREE	~~774~~	~~757~~	~~1,263~~	~~921~~	~~531~~	~~420~~
	493	571	841	609	359	284
FOUR	~~863~~	~~845~~	~~1,410~~	~~1,028~~	~~592~~	~~469~~
	550	637	939	680	401	317

(d) remains as proposed.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

4. At the time the notice proposing the amendment of these rules was filed, the Department could not calculate the benefit levels for the upcoming heating season because the

amount of Montana's federal LIEAP appropriation was unknown. The tables showing the benefit levels in ARM 37.70.601(1)(c)(i) through (iii) are now being amended to adjust benefit amounts based on the new appropriation.

5. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The Department received several comments from organizations which provide assistance and services to low income individuals stating that they support the expansion of LIEAP eligibility to include households with income between 125 and 150 percent of poverty and the elimination of supplemental assistance benefits. Several commentors indicated that they "cautiously" or "reluctantly" supported the rule changes, because of the adverse effects on low income families caused by elimination of supplemental assistance and by the lower benefit amounts families with income from 0 to 125 percent of poverty will receive as a result of distributing a finite amount of LIEAP dollars to a larger number of eligible families. The commentors noted that without supplemental assistance, families receiving utility shut-off notices at the end of the heating season will be at risk, and there will be an increased demand for help from their organizations which these organizations will be unable to meet. There will also be an increased demand on limited Universal Systems Benefits (USB) funds. One commentor asked the Department to consider the effect of eliminating supplemental assistance on families threatened with the shut-off of their utilities in the spring.

One commentor stated that problems faced by low income families such as threatened shut-off of their utilities are caused by lack of federal funding for the LIEAP program rather than by the changes in the LIEAP rules proposed by the Department. The commentors urged the Department to work to increase federal funding for LIEAP, to work with the Public Service Commission to increase the minimum percentage of USB funds required to be used for low-income citizens, and to engage in a dialogue with interested parties to address low-income energy issues.

RESPONSE: As these commentors recognized, the elimination of supplemental assistance benefits and the lower benefit amounts for families with income from 0 to 125 percent of poverty are necessary in order to fund the expansion of eligibility to include families with income between 125 and 150 percent of poverty. The Department determined, as these commentors reluctantly agreed, that this was a necessary trade-off despite the potential adverse impact on some low-income families. The Department acknowledges that the lack of supplemental assistance will be problematic for families receiving utility shut-off notices and will create an increased demand on organizations such as Energy Share and on USB funds. However, it should be noted that some LIEAP families were not eligible for

supplemental assistance despite having large unpaid utility bills because a family was required to have paid 5 percent of its own income for home energy costs in order to qualify for supplemental assistance.

The Department will continue to initiate and engage in a dialogue with interested parties to address low income energy issues. The Department will also continue to initiate and participate in activities to encourage additional LIEAP funding and additional USB assistance for low income individuals.

COMMENT #2: One party expressed support for the proposed changes to ARM 37.70.407 regarding the calculation of income. The commentor stated that the changes would make eligibility determinations much less burdensome for the LIEAP eligibility workers and would be more equitable to the household applying for assistance.

RESPONSE: The Department agrees.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State October 1, 2001.

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

In the matter of the amendment of ARM 37.86.2207 pertaining to medicaid mental health services	))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On June 21, 2001, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 1044 of the 2001 Montana Administrative Register, issue number 12.

2. The Department has amended ARM 37.86.2207 as proposed.

3. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The proposed rate reduction for Intensive Day Treatment (IDT) and Subacute Partial Hospitalization (SAP) services is not made more attractive by the provision allowing physician services to be billed and reimbursed separately. The current rate already allows separate billing of physician services.

RESPONSE: The commentor correctly observed that the existing rates for IDT and SAP allow physician services to be billed separately. The Department intended the rate to be consistent with rates for other Medicaid services with potential medical cost components. Typically, physician services are billed separately and the Department is not aware of any special circumstances that would justify deviation from its usual practice.

COMMENT #2: The proposed rate reduction is not made more attractive by the provision allowing transportation costs to be billed and reimbursed separately. It is impractical for a provider to obtain reimbursement for transportation costs, if not impossible.

RESPONSE: The Department did not include transportation costs in the "bundled" rate for SAP and IDT because other rates for the reimbursement of Medicaid services do not include an allowance for transportation of consumers. Medicaid reimbursement is available separately to providers who use private vehicles to secure medically necessary examinations and treatment for Medicaid recipients. While prior authorization is required, providers can, when appropriate, obtain weekly or monthly authorization by calling the Department's utilization review contractor, the Mountain Pacific Quality Health Foundation at 1-

800-292-7114. As of August 31, 2001, the rate for private vehicles is $0.345 per mile up to 500 miles per month and $0.15 per mile after that. If a provider transports more than one Medicaid recipient, the rate will be based on the consumer who is transported the greatest distance.

COMMENT #3: Educational expenses should be included in the "bundled" rate because ARM 37.86.3001(5)(c)(vi) and ARM 37.88.1101(2)(h)(vi) require SAP and IDT providers to offer education services. It is impractical, time consuming and difficult for providers to obtain education services or reimbursement from school districts and education agencies, if not impossible.

RESPONSE: The Department does not anticipate that providers will incur significant costs educating children in SAP and IDT programs. IDT and SAP services are not intended to be a substitute for long-term treatment of chronic emotional disturbances. Only rarely will a child attending an SAP and IDT program require extensive education services. The Department is not aware of any special circumstances that would justify deviation from the general principle that schools are primarily responsible for education costs. The Department is aware that school funding is scarce and it is sympathetic to providers who find it difficult to obtain services from schools and education agencies. However, it does not agree that difficulty alone is sufficient to justify the inclusion of education expenses as a component of the Medicaid rate.

COMMENT #4: The proposed 15% allowance for administrative overhead is not adequate.

RESPONSE: The Department believes the rate adequately allows for reasonable administrative overhead. The 15% overhead allowed by this rule is generous in comparison with the overhead experienced by the Department at Montana State Hospital and is greater than the 10% typically allowed in Federal grants.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State October 1, 2001.

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

In the matter of the amendment of ARM 37.86.4401, 37.86.4405, 37.86.4406, 37.86.4407, 37.86.4412, 37.86.4413, 37.86.4414 and 37.86.4420 pertaining to rural health clinics (RHC) and federally qualified health centers (FQHC)	)	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On July 19, 2001, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1301 of the 2001 Montana Administrative Register, issue number 14.

2. The Department has amended ARM 37.86.4401, 37.86.4405, 37.86.4407, 37.86.4413, 37.86.4414 and 37.86.4420 as proposed.

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

37.86.4406 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, SERVICE REQUIREMENTS (1) through (6) remain as proposed.

(7) If clinic or center services are provided in more than one location, each location is independently considered for approval as an RHC or FQHC medicaid provider, unless prior approval was granted by the department, to operate both locations under one provider number. To be considered for operation under one provider number both sites must share medical staff, office staff or administrative staff. The provider must notify the department of this change in status as provided in (6).

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

37.86.4412 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, REIMBURSEMENT (1) remains as proposed.

~~(2) These rules are subject to the provisions of any conflicting federal statute, regulation or policy, whether now in existence or hereafter enacted or adopted.~~

(3) through (8) remain as proposed, but are renumbered (2) through (7).

(8) The prospective payment per visit rate may be adjusted by a percentage of the total cost increase or decrease due to

changes in scope of services as reported in ARM 37.86.4406(6).

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

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The proposed amendment to ARM 37.86.4412(2) regarding federal preemption is confusing. What is the purpose of this clause?

RESPONSE: The Department agrees the proposed language is confusing. Since the proposed amendment to ARM 37.86.4412(2) was intended to restate the law of federal preemption, the Department determined that the amendment was superfluous and is deleting it from the rule.

COMMENT #2: The proposed amendment to ARM 37.86.4412(6) indicates that such rates will be retroactive to January 1, 2001 and proposed changes to ARM 37.88.4412(8) indicates that subsequent rate changes will be retroactive to January 1 of each calendar year. Montana law forbids the Department from making any payment reductions retroactively. Please confirm that payment reductions will only be applicable on a prospective basis.

RESPONSE: The January 1, 2001 retroactive date will have no adverse effect on services, benefits or reimbursement. The Department will make payment reductions only on a prospective basis.

COMMENT #3: Will the payment increase, retroactive to January 1 of each year, be provided on a mass adjustment basis without requiring the provider to submit individual adjustment claims?

RESPONSE: The Department will apply retroactive annual payment increases through a mass adjustment or on a gross adjustment basis. Providers will not be required to submit individual adjustment claims.

COMMENT #4: The proposed amendment to ARM 37.86.4412(7) provides the method for adjusting per visit rates in succeeding calendar years based on the Medicare Economic Index (MEI) but makes no mention of the federal requirement that rates also be adjusted to take into account increases/decreases in the scope of services furnished by the RHC or FQHC. Department representatives have indicated that they feel this requirement is covered by ARM 37.86.4406(6) of the proposed rules and that such adjustments may be made at any time. However, language, such as "and any increase or decrease in scope of services furnished by the clinic or center as provided in ARM 37.86.4406(6)" should be added to this rule to ensure that

providers are aware of the opportunity to have their rate adjusted for changes in scope annually as provided in federal law.

RESPONSE: The Department agrees and is adding subsection (8) to ARM 37.86.4412 to accomplish this.

COMMENT #5: Several clinics and centers are in the process of partnering with smaller sites in other towns. Will each location be required to operate under a separate provider number, even though they share medical staff or office staff? The rules are currently silent on this issue.

RESPONSE: The Department would like to offer clinics and centers operating two or more sites with shared staff the ability to submit Medicaid RHC and FQHC claims under one provider number if prior approval is granted. The Department is adding subsection (7) to ARM 37.86.4406 to accomplish this.

5. The proposed amendments will be applied to rate years beginning on or after January 1, 2001.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State October 1, 2001.

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 42.23.103, 42.23.107, 42.23.108, 42.23.109, 42.23.112, 42.23.113, 42.23.212, 42.23.301, 42.23.303, 42.23.311, 42.23.313, 42.23.401, 42.23.403, 42.23.405, 42.23.407, 42.23.411, 42.23.412, 42.23.413, 42.23.414, 42.23.418, 42.23.421, 42.23.422, 42.23.423, 42.23.424, 42.23.601, 42.23.605, 42.23.607, 42.23.609, and 42.23.702; and repeal of ARM 42.23.104, 42.23.118, 42.23.119, and 42.23.120 relating to corporation license taxes	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 23, 2001, the department published notice of the proposed amendment and repeal of the above-stated rules relating to corporation license taxes at page 1600 of the 2001 Montana Administrative Register, issue no. 16.

2. A public hearing was held on September 13, 2001, to consider the proposed amendment and repeal. No one appeared to testify and no written comments were received.

3. The department has amended and repealed 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 October 1, 2001

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 42.24.102 and 42.24.121; and repeal of ARM 42.24.103, 42.24.211, 42.24.212, and 42.24.213 relating to special provisions applicable to corporation license taxes	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 23, 2001, the department published notice of the proposed amendment and repeal of the above-stated rules relating to special provisions applicable to corporation license taxes at page 1615 of the 2001 Montana Administrative Register, issue no. 16.

2. A public hearing was held on September 13, 2001, to consider the proposed amendment and repeal. No one appeared to testify and no written comments were received.

3. The department has amended and repealed 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 October 1, 2001

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 42.25.1809 and 42.25.1810 relating to tax rates and distribution of oil and gas proceeds	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 23, 2001, the department published notice of the proposed amendment of ARM 42.25.1809 and 42.25.1810 relating to oil and gas proceeds at page 1588 of the 2001 Montana Administrative Register, issue no. 16.

2. No comments were received regarding these rules.

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 October 1, 2001

**BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 44.10.101, 44.10.201, 44.10.303, 44.10.305, 44.10.307, 44.10.309, 44.10.321, 44.10.325, 44.10.327, 44.10.329, 44.10.330, 44.10.331, 44.10.332, 44.10.333, 44.10.335, 44.10.401, 44.10.405, 44.10.409, 44.10.413, 44.10.501, 44.10.511, 44.10.521, 44.10.525, 44.10.601, 44.10.603, 44.10.605, 44.10.607, 44.10.608, 44.10.612, 44.10.613 regarding organizational, procedural, campaign finance and practices, and ethics rules	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 23, 2001, the Commissioner of Political Practices published notice of the proposed amendment of the above-stated rules at page 1619 of the 2001 Montana Administrative Register, Issue Number 16.

2. The Commissioner has amended ARM 44.10.101, 44.10.201, 44.10.303, 44.10.305, 44.10.307, 44.10.309, 44.10.321, 44.10.325, 44.10.329, 44.10.330, 44.10.331, 44.10.332, 44.10.333, 44.10.335, 44.10.401, 44.10.405, 44.10.409, 44.10.413, 44.10.501, 44.10.511, 44.10.521, 44.10.525, 44.10.601, 44.10.603, 44.10.605, 44.10.607, 44.10.608, 44.10.612, and 44.10.613 as proposed. The Commissioner has amended ARM 44.10.327 with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

44.10.327 POLITICAL COMMITTEE, TYPES (1) through (2)(a) remain as proposed.

(i) A ballot issue committee is specifically organized to support or oppose a ballot issue, as defined in ~~13-31-101~~ 13-1-101, MCA.

(ii) through (b) remain as proposed.

(i) A political action committee ("PAC") is a committee composed of individuals who ~~voluntarily~~ contribute their money for the purpose of supporting or opposing candidates or issues ~~that the members of the committee agree upon~~ upon which the committee agrees. ~~PACs are typically formed by employees, shareholders, or members of a common employer, or members of a particular profession or trade.~~

(ii) through (3) remain as proposed.

**AUTH: 13-37-114, MCA
IMP: 13-1-101, MCA**

3. The Commissioner has thoroughly considered all comments received. The comments and the Commissioner's response to each follow.

COMMENT 1: The proposed deletion, in ARM 44.10.201(1)(b), of the requirement that the Commissioner give notice of and call for a meeting prior to issuing an advisory opinion will result in lack of notice regarding the request for an opinion. The Commissioner should send copies of requests for an advisory opinion to interested parties.

RESPONSE: The amended language authorizes the Commissioner to seek public comment prior to issuing an advisory opinion, in which case interested parties would be notified. The elimination of the mandatory meeting requirement provides the Commissioner with the latitude to issue informal opinions on a variety of issues, utilizing a more flexible procedure for disposition of opinion requests.

COMMENT 2: ARM 44.10.307 should be amended to require one who files a campaign finance and practices complaint to cite or provide any evidence in support of the complaint.

RESPONSE: The rule as amended requires a complaint to describe in detail the alleged violation, cite each statute and/or rule alleged to have been violated, and include any evidentiary material.

COMMENT 3: The proposed addition of new subsection (2)(a)(i) in ARM 44.10.327 contains an incorrect statutory reference.

RESPONSE: The correct statutory reference has been inserted.

COMMENT 4: Proposed new subsection (2)(b)(i) in ARM 44.10.327, defining a PAC, unnecessarily includes the word "voluntarily," and as written could be construed to require unanimous consent of committee members to authorize expenditures of funds collected by the PAC.

RESPONSE: The language has been modified to address these concerns.

COMMENT 5: The last sentence of proposed new subsection (2)(b)(i) of ARM 44.10.327 singles out labor unions and employee groups for classification as PACs. The sentence should be deleted because it is unnecessary.

RESPONSE: The sentence was inserted to describe the most common examples of PACs. It was not intended to be an exclusive list, nor was it intended that the parent organization (corporation, union, etc.) would be classified as

a PAC. Nevertheless, the Commissioner agrees that the sentence is unnecessary, and it has been deleted.

COMMENT 6: ARM 44.10.612 should include provisions to ensure that privacy interests of those named in ethics complaints are protected.

RESPONSE: Senate Bill 205 amends the confidentiality provisions of 2-2-136, MCA. The Commissioner determined that the rule implementing those provisions should simply refer to maintenance of the confidentiality of privacy interests entitled to protection by law.

COMMENT 7: An attorney for the Legislative Services Division submitted a comment expressing the concern that the statement of reasonable necessity in the Notice of Proposed Amendment does not comply with the requirements of 2-4-305(6)(b), MCA.

RESPONSE: The Commissioner has carefully reviewed the requirements of 2-4-305(6)(b), MCA in light of paragraph 4 of the Notice of Proposed Amendment, which contains the statement of reasonable necessity for amendment of the rules. The Commissioner disagrees with the contention that paragraph 4 does not comply with 2-4-305(6)(b), MCA. The Commissioner believes that paragraph 4 clearly and thoroughly describes the reasonable necessity for amendment of the rules.

/s/ Linda Vaughey
LINDA VAUGHEY
Commissioner of Political Practices

/s/ James Scheier
JAMES SCHEIER
Rule Reviewer

Certified to the Secretary of State on October 1, 2001.

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 which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2001. This table includes those rules adopted during the period July 1, 2001 through September 30, 2001 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 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 2000 and 2001 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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