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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 amendment of ARM 17.30.2003 pertaining to enforcement actions for administrative penalties	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On April 9, 2002, at 10:00 a.m., a public hearing will be held in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this 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., March 27, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386 or email "ber@state.mt.us".

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

17.30.2003 ENFORCEMENT ACTIONS FOR ADMINISTRATIVE PENALTIES (1) ~~The department, upon determining that a violation has occurred, may initiate an administrative action for penalty.~~ Before initiating an administrative penalty action under this rule, the department shall issue a notice letter, in accordance with 75-5-617, MCA, notifying the person of the violation and requiring compliance. The department is not required to issue a notice letter under 75-5-617, MCA, if the violation represents an imminent threat to human health, safety, or welfare or to the environment.

(2) When the department has reason to believe that a violation has occurred, the department may initiate an administrative penalty action in accordance with 75-5-611, MCA, and this rule. Except for a violation specified under (7) ~~of this rule~~, the department shall first issue a written notice letter to a violator by certified mail or personal delivery that:

(a) contains the information required in 75-5-611(1), MCA, including the amount of penalty proposed for assessment under ~~(5)~~ (6) ~~of this rule~~;

(b) through (3) remain the same.

(4) A notice letter issued in accordance with (2) satisfies the notice letter requirement in (1).

~~(4)(a)~~(5) ~~The~~ Except as provided in (7), the department may not assess a penalty for a violation cited in the notice

letter if the violator submits to the department in writing within the time specified in the notice letter:

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

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

~~(5)(a)~~(6) If, after completing the requirements of (2) ~~of this rule~~, the department determines that the violator has not adequately responded as required in ~~(4) of this rule~~ (5), the department may issue an administrative notice and order that assesses a penalty.

~~(b)~~ (a) The administrative notice and order must contain, as applicable, the information described in (2) ~~of this rule~~.

~~(c)~~ (b) If the department finds that a violator is not in compliance as certified under ~~(4)~~(5)(a)~~(i) of this rule~~, or if a violator fails to adhere to the requirements of the plan and schedule for corrective action approved under ~~(4)(a)(ii)~~(5)(b) ~~of this rule~~, the department may without further notice issue an administrative notice and order assessing a penalty.

~~(6) The department shall notify the violator in writing within 30 days of the resolution of an enforcement action under this rule briefly stating the manner of resolution.~~

~~(7) For a violation of 75-5-605, MCA, that represents an imminent threat to human health, safety, or welfare or to the environment, the department may issue immediately, without a written notice letter, an administrative notice and order that assesses administrative penalties.~~

(7) In lieu of the notice letter under (2), the department may issue an administrative notice together with an administrative order if the department's action:

(a) does not involve assessment of an administrative penalty; or

(b) seeks an administrative penalty only for an activity that the department believes and alleges was or is a violation of 75-5-605, MCA, and the violation was or is:

(i) a class I violation as described in ARM 17.30.2001(1); or

(ii) a violation of major extent and gravity as described in ARM 17.30.2006.

(8) Nothing in this rule may be construed as limiting the department's authority under Title 75, chapter 5, MCA, to address violations through administrative compliance or cleanup orders or through judicial actions for penalties or injunctive relief.

AUTH: 75-5-201, MCA
IMP: 75-5-611, MCA

REASON: Section 75-5-611, MCA, authorizes the department to assess administrative penalties when the department has reason to believe that a violation of water quality statutes, rules, or permit conditions has occurred. There are two separate penalty procedures set out in Section 75-5-611, MCA. The

first procedure is a notice of possible penalty under 75-5-611(1), MCA, in which a violator is notified that a specific penalty will be assessed unless corrective action is taken. If the corrective action is taken, the penalty is not assessed.

The second administrative penalty procedure provided under 75-5-611, MCA, is the issuance of a notice and order under 75-5-611(2), MCA. An order issued under 75-5-611(2), MCA, may assess an administrative penalty regardless of whether corrective action is taken. As provided in 75-5-611(2), MCA, the department may issue an administrative penalty order only for an activity that the department believes and alleges has violated or is violating 75-5-605, MCA.

The existing rule at ARM 17.30.2003 is intended to implement the administrative penalty procedures of 75-5-611, MCA. The rule provides a procedure for implementing 75-5-611(1), MCA. However, it fails to implement 75-5-611(2), MCA. ARM 17.30.2003(7) actually has the effect of prohibiting issuance of an administrative penalty order under 75-5-611(2), MCA, except when a violation: (1) is a violation of 75-5-605, MCA; and (2) represents an "imminent threat to human health, safety, or welfare or to the environment". The "imminent threat" condition is not found anywhere in 75-5-611, MCA, but instead applies to the notice procedures in 75-5-617, MCA. The existing rule fails to clearly distinguish between the notice procedures of 75-5-611 and those of 75-5-617, MCA.

The proposed amendments to the rule eliminate the "imminent threat" condition in ARM 17.30.2003(7) and clarify, in proposed new section ARM 17.30.2003(1), that the "imminent threat" condition applies to notice letters issued under 75-5-617, MCA. These amendments are necessary to correctly implement 75-5-611 and 75-5-617, MCA.

The proposed new section ARM 17.30.2003(4) clarifies that a notice letter that meets the requirements of 75-5-611(1), MCA, also meets the requirements of 75-5-617, MCA. The elements of notice letters as set out in 75-5-611(1), MCA, include, but are more extensive than, the elements of notice letters set out in 75-5-617, MCA. The amendment is necessary to inform the public that, if the department initiates action under 75-5-611(1), MCA, a separate notice letter under 75-5-617, MCA, is not legally required.

The proposed new section ARM 17.30.2003(7) identifies criteria that the department will follow in exercising its discretion to issue administrative penalty orders under 75-5-611(2), MCA. The amendments are necessary to implement 75-5-611(2), MCA, and to identify the violations for which the department will seek an administrative penalty regardless of whether the violator has corrected the violation. Under the proposed amendments, such orders will be issued only for significant violations of 75-5-605, MCA. Specifically, such orders will be issued for violations of 75-5-605, MCA, that also are either a "Class I violation" or are a violation of

"major extent and gravity", as those terms are defined in ARM Title 17, chapter 30, subchapter 20.

The proposed new section ARM 17.30.2003(8) is necessary to clarify that the procedures in this rule do not affect the department's enforcement authority under other sections in the water quality statutes. The department may, after complying with the notice letter requirements of 75-5-617, MCA, utilize any of the other enforcement mechanisms set out in the water quality laws.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at "ber@state.mt.us" and must be received no later than 5:00 p.m., April 9, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

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

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

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

BOARD OF ENVIRONMENTAL REVIEW

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

Reviewed by:

JAMES M. MADDEN
James M. Madden, Rule Reviewer

Certified to the Secretary of State, February 4, 2002.

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

In the matter of the amendment of ARM 17.8.101, 17.8.102, 17.8.302, 17.8.401, 17.8.801, 17.8.901 and 17.8.1005, pertaining to definitions and incorporation by reference of current federal regulations and other materials into air quality rules	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On March 28, 2002, at 10:30 a.m., a public hearing will be held in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., March 11, 2002, to advise the Board of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email "ber@state.mt.us".

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

17.8.101 DEFINITIONS As used in this chapter, unless indicated otherwise in a specific subchapter, the following definitions apply:

(1) through (40) remain the same.

(41)~~(a)~~ "Volatile organic compounds (VOC)" means the same as defined in 40 CFR 51.100(s). ~~any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity:~~

~~methane;~~
~~ethane;~~
~~methyl acetate;~~
~~methylene chloride (dichloromethane);~~
~~1,1,1-trichloroethane (methyl chloroform);~~
~~1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);~~
~~trichlorofluoromethane (CFC-11);~~
~~dichlorodifluoromethane (CFC-12);~~
~~chlorodifluoromethane (HCFC-22);~~
~~trifluoromethane (HFC-23);~~

~~1,2-dichloro-1,1,2,2 tetrafluoroethane (CFC-114);~~
~~chloropentafluoroethane (CFC-115);~~
~~1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);~~
~~difluoromethane (HFC-32);~~
~~ethylfluoride (HFC-161);~~
~~1,1,1,3,3,3-hexafluoropropane (HFC-236fa);~~
~~1,1,2,2,3-pentafluoropropane (HFC-245ca);~~
~~1,1,2,3,3-pentafluoropropane (HFC-245ea);~~
~~1,1,1,2,3-pentafluoropropane (HFC-245eb);~~
~~1,1,1,3,3-pentafluoropropane (HFC-245fa);~~
~~1,1,1,2,3,3-hexafluoropropane (HFC-236ea);~~
~~1,1,1,3,3-pentafluorobutane (HFC-365mfc);~~
~~chlorofluoromethane (HCFC-31);~~
~~1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);~~
~~1 chloro-1-fluoroethane (HCFC-151a);~~
~~1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$);~~
~~2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$);~~
~~1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$);~~
~~2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$);~~
~~1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC43-10mee);~~
~~3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);~~
~~1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);~~
~~1,1,1,2-tetrafluoroethane (HFC-134a);~~
~~1,1-dichloro-1-fluoroethane (HCFC-141b);~~
~~1-chloro-1,1-difluoroethane (HCFC-142b);~~
~~2-chloro-1,1,1,2-tetra-fluoroethane (HCFC-124);~~
~~pentafluoroethane (HFC-125);~~
~~1,1,2,2-tetrafluoroethane(HFC-134);~~
~~1,1,1-trifluoroethane (HFC-143a);~~
~~1,1-difluoroethane (HFC-152a);~~
~~parachlorobenzotrifluoride (PCBTF);~~
~~cyclic, branched, or linear completely methylated siloxanes;~~
~~acetone;~~
~~perchloroethylene (tetrachloroethylene) and perfluorocarbon compounds which fall into these classes:~~
~~(i) cyclic, branched, or linear completely fluorinated alkanes;~~
~~(ii) cyclic, branched, or linear completely fluorinated ethers with no unsaturations;~~
~~(iii) cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and~~
~~(iv) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.~~

~~(b) For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in 40 CFR Part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the department. As a precondition to excluding these compounds as VOC or at any time thereafter, the~~

~~department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the department, the amount of negligibly-reactive compounds in the source's emissions.~~

(42) and (43) remain the same.

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

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

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2000~~ 2001, edition of the Code of Federal Regulations (CFR);

(b) and (c) remain the same.

(d) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~2000~~ 2001, edition of the Administrative Rules of Montana (ARM).

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

17.8.302 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) through (e) remain the same.

(f) 40 CFR Part 63, specifying emission standards for hazardous air pollutant source categories ~~including the final rules published at 66 FR 3179 on January 12, 2001, "National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills", to be codified at 40 CFR 63, subpart MM~~.

(2) through (4) remain the same.

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

17.8.401 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

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

(v) techniques under (1)(a)(iii) above that increase final exhaust gas plume rise when the resulting allowable emissions for sulfur dioxide from the facility do not exceed 5,000 tons per year.

(2) through (4)(c) remain the same.

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

17.8.801 DEFINITIONS For the purpose of this subchapter, the following definitions apply:

(1) through (28) remain the same.

(29)~~(a)~~ "Volatile organic compounds (VOC)" means the same as defined in 40 CFR 51.100(s). ~~any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity:~~ methane; ethane; methyl acetate; methylene chloride ~~(dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);trichlorofluoromethane(CFC-11); ichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23);1,2-dichloro-1,1,2,2-tetrafluoroethane(CFC-114); chloropentafluoroethane(CFC-115);1,1,1-trifluoro-2,2-dichloroethane (HCFC-123);difluoromethane(HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3 -pentafluoropropane (HFC-245ea);1,1,1,2,3-pentafluoropropane(HFC-245eb); 1,1,1,3,3-pentafluoropropane(HFC-245fa);1,1,1,2,3,3-hexafluoropropane (HFC-236ea);1,1,1,3,3- pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1 chloro-1-fluoroethane(HCFC-151a);1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane(C4F9OCH3); 2-(difluoromethoxymethyl) -1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OCH3); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C4F9OC2H5);2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3 -heptafluoropropane ((CF3)2CFCF2OC2H5); 1,1,1,2,3,4,4,5,5,5 -decafluoropentane(HFC43-10mee)3,3-dichloro-1,1,1,2,2,-pentafluoropropane(HCFC-225ca);1,3-dichloro-1,1,2,2,3-pentafluoropropane(HCFC-225cb);1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1 -fluoroethane(HCFC-141b);1-chloro-1,1-difluoroethane(HCFC-142b); 2-chloro-1,1,1,2-tetra-fluoroethane(HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene) and perfluorocarbon compounds which fall into these classes:~~

~~(i) cyclic, branched, or linear completely fluorinated alkanes;~~

~~(ii) cyclic, branched, or linear completely fluorinated ethers with no unsaturations;~~

~~(iii) cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and~~

~~(iv) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.~~

~~(b) For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in 40 CFR Part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the department. As a precondition to~~

~~excluding these compounds as VOC or at any time thereafter, the department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the department, the amount of negligibly-reactive compounds in the source's emissions.~~

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.901 DEFINITIONS For the purposes of this subchapter:

(1) through (19) remain the same.

(20)~~(a)~~ "Volatile organic compounds (VOC)" means the same as defined in 40 CFR 51.100(s). ~~any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methyl acetate; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro-1,1,2,2 -tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2 -dichloroethane (HCFC-123); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3 -pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1 chloro-1-fluoroethane (HCFC-151a); 1,1,1,2,2,3,3,4,4 -nonafluoro-4-methoxy-butane (C4F9OCH3); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OCH3); 1-ethoxy-1,1,2,2,3,3,4,4,4 -nonafluorobutane (C4F9OC2H5); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3 -heptafluoropropane ((CF3)2CFCF2OC2H5); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC43-10mee) 3,3-dichloro -1,1,1,2,2,-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1 -fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene) and perfluorocarbon compounds which fall into these classes:~~

~~(i) cyclic, branched, or linear completely fluorinated alkanes;~~

~~(ii) cyclic, branched, or linear completely fluorinated~~

~~ethers with no unsaturations;~~

~~(iii) cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and~~

~~(iv) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.~~

~~(b) For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in 40 CFR Part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the department. As a precondition to excluding these compounds as VOC or at any time thereafter, the department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the department, the amount of negligibly-reactive compounds in the source's emissions.~~

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1005 ADDITIONAL CONDITIONS OF AIR QUALITY PRE-CONSTRUCTION PERMIT (1) through (5) remain the same.

(6) Emission reductions (air quality offsets) under (1)(c) ~~of this rule~~ must also comply with the additional requirements for determining the baseline and magnitude of emission reductions (air quality offsets) contained in ARM 17.8.905(1)(c) and 17.8.906, except that ~~17.8.905~~ 17.8.906(6) through (8) shall not be applicable to offsets required under this subchapter.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: The proposed amendments to ARM 17.8.101, 17.8.801, and 17.8.901 would delete definitions of the phrase "volatile organic compounds (VOC)" that are equivalent to the definition of that phrase in federal regulations and replace the state definitions with incorporations by reference of the same definition in 40 CFR 51.100(s). The U.S. Environmental Protection Agency (EPA) frequently revises the federal definition, requiring the Board to frequently revise its definition to maintain equivalency. Also, in past revisions of the definitions in the Montana rules, clerical errors have been made in reproducing the lengthy compound names included in the definition. Incorporation by reference of the federal definition would avoid that problem.

The proposed amendments to ARM 17.8.102 would adopt revisions to the federal air quality regulations that are incorporated by reference in the Montana air quality rules and that were published in the Federal Register between July 1, 2000, and June 30, 2001, and that are included in the July 1, 2001, edition of the CFR. The proposed amendments to ARM 17.8.102 are necessary to update the incorporations by reference in the air quality rules to incorporate the most recent editions

of the Code of Federal Regulations (CFR) and the Administrative Rules of Montana. These proposed amendments are necessary to allow the Department of Environmental Quality to follow the most recent editions. Also, incorporation of recent revisions to federal regulations incorporated by reference in the Montana air quality rules is necessary for the State to retain primacy over Montana's air quality program.

The Board is proposing to amend ARM 17.8.302 by deleting the reference to a certain specified Federal Register notice for new federal pulp mill emission standards for hazardous air pollutants. EPA has now codified those standards in the CFR so that the Board's proposed incorporation by reference of the most recent edition of the CFR would include those regulations.

The Board is proposing amendments to ARM 17.8.401 and 17.8.1005 to correct internal references to other air quality rule provisions.

The Board will also take testimony on submission of the proposed amendments to EPA as proposed revisions to the State Implementation Plan (SIP).

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386, or emailed to "ber@state.mt.us", no later than 5:00 p.m., April 4, 2002. To be guaranteed consideration, written comments must be postmarked on or before that date.

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

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

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

BOARD OF ENVIRONMENTAL REVIEW

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

Reviewed by:

DAVID RUSOFF
David Rusoff, Rule Reviewer

Certified to the Secretary of State February 4, 2002.

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

In the matter of the adoption of NEW RULES I through XVII and the repeal of ARM Title 17, chapter 8, subchapter 7 pertaining to the issuance of Montana air quality permits	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL (AIR QUALITY)

TO: All Concerned Persons

1. On March 27, 2002, at 1:00 p.m., a public hearing will be held in Room 35, Department of Environmental Quality, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules pertaining to the issuance of Montana air quality permits.

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

3. The proposed new rules provide as follows:

RULE I DEFINITIONS For the purposes of this subchapter:

(1) "Best available control technology (BACT)" means an emission limitation (including a visible emission standard), based on the maximum degree of reduction for each pollutant subject to regulation under 42 U.S.C. 7410, et seq. or 75-2-101, et seq., MCA, that would be emitted from any proposed emitting unit or modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such emitting unit or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such contaminant. In no event may application of BACT result in emission of any regulated air pollutant that would exceed the emissions allowed by any applicable standard under ARM Title 17, chapter 8, subchapter 3, and this subchapter. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of emitting units would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or operational standard or combination thereof, to require the application of BACT. Such

standard must, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and must provide for compliance by means that achieve equivalent results.

(2) "Construct" or "construction" includes a reasonable period of time for startup and shakedown and means:

(a) initiation of on-site fabrication, erection, or installation of an emitting unit or control equipment including, but not limited to:

(i) installation of building supports or foundations;

(ii) laying of underground pipework; or

(iii) construction of storage structures; or

(b) the installation of any portable or temporary equipment or facilities.

(3) "Day" means calendar day unless otherwise stated.

(4) "Emitting unit" means:

(a) any equipment that emits any regulated air pollutant through a stack(s) or vent(s); or

(b) any equipment from which emissions consist solely of fugitive emissions of a regulated air pollutant.

(5) "Existing emitting unit" means an emitting unit that was in existence and operating or was capable of being operated on March 16, 1979, or for which the department had issued a permit by that date.

(6) "Facility" means any real or personal property that is either stationary or portable and is located on one or more contiguous or adjacent properties under the control of the same owner or operator that contributes or would contribute to air pollution, including associated control equipment that affects or would affect the nature, character, composition, amount, or environmental impacts of air pollution and that has the same two-digit standard industrial classification code. A facility may consist of one or more emitting units.

(7) "Install" or "installation" means to set into position and connect or adjust for use.

(8) "Modify" does not include routine maintenance, repair, or replacement but means:

(a) construction or changes in operation at a facility or emitting unit for which the department has issued a Montana air quality permit under this chapter, except when a permit is not required under [Rule IV];

(b) construction or changes in operation at a facility or emitting unit for which a Montana air quality permit has not been issued under this chapter but that subjects the facility or emitting unit to the requirements of [Rule II];

(c) construction or changes in operation at a facility or emitting unit that would violate any condition in the facility's Montana air quality permit, any board or court order, any control plan within the Montana state implementation plan, or any rule in this chapter, except as provided in [Rule IV];

(d) construction or changes in operation at a facility or emitting unit that would qualify as a major modification of

a major stationary source under subchapters 8, 9, or 10 of this chapter;

(e) construction or changes in operation at a facility or emitting unit that would affect the plume rise or dispersion characteristics of emissions in a manner that would cause or contribute to a violation of an ambient air quality standard or an ambient air increment, as defined in ARM 17.8.804; or

(f) any change in operation that affects emissions and that was not previously permitted, except that a change in operation that does not result in an increase in emissions because of the change is not a modification.

(9) "Montana air quality permit" means a preconstruction permit issued under this subchapter that may include requirements for the construction and subsequent operation of an emitting unit(s) or facility.

(10) "Negligible risk to the public health, safety, and welfare and to the environment" means an increase in excess lifetime cancer risk of less than 1.0×10^{-6}, for any individual pollutant, and 1.0×10^{-5}, for the aggregate of all pollutants, and an increase in the sum of the non-cancer hazard quotients for all pollutants with similar toxic effects of less than 1.0, as determined by a human health risk assessment conducted according to [Rule XVII]. The department shall also consider environmental impacts identified in any environmental analysis conducted pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, MCA, in determining compliance with all applicable rules or other requirements requiring protection of public health, safety, and welfare and the environment.

(11) "New or modified emitting unit" means an emitting unit that was not constructed or upon which construction was not commenced prior to March 16, 1979.

(12) "Owner or operator" means the owner of a facility or other person designated by the owner as responsible for overall operation of the facility.

(13) "Potential to emit" means the maximum capacity of a facility or emitting unit, within physical and operational design, to emit a pollutant. Any physical or operational limitation on the capacity of the facility or emitting unit to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions are not considered in determining potential to emit.

(14) "Routine maintenance, repair, or replacement" means any action taken upon an emitting unit by the owner or operator that is necessary on a periodic basis to assure proper operation of the emitting unit. The term routine does not include activities that:

(a) have associated fixed capital costs in excess of 50% of the fixed capital cost necessary to construct a comparable, entirely new emitting unit;

(b) change the design of the emitting unit, including associated control equipment; or

(c) increase the potential to emit of the emitting unit.

(15) "Secondary emissions" means emissions that would occur as a result of the construction or operation of a facility or emitting unit, but do not come from the facility or emitting unit itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the facility or emitting unit which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) emissions from trains coming to or from the facility or emitting unit;

(b) emissions from any off-site support facility that otherwise would not be constructed or increase its emissions as a result of the construction or operation of the facility or emitting unit.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, 75-2-215, MCA

RULE II MONTANA AIR QUALITY PERMITS--WHEN REQUIRED

(1) Except as provided in [RULE III] and [RULE IV], a person may not construct, install, modify, or operate any of the following without first obtaining a Montana air quality permit issued by the department:

(a) a new facility or emitting unit with the potential to emit airborne lead in an amount greater than five tons per year or a modification to an existing facility or emitting unit that results in an increase in the facility or emitting unit's potential to emit airborne lead by an amount greater than 0.6 tons per year;

(b) asphalt concrete plants, mineral crushers, and mineral screens that have the potential to emit more than 15 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter;

(c) any incinerator, as defined in 75-2-103(11), MCA, and that is subject to the requirements of 75-2-215, MCA;

(d) any facility or emitting unit upon which construction commenced, or that was installed, before November 23, 1968, when that facility or emitting unit is modified after that date and the modification increases the potential to emit by more than 25 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter; or

(e) any other facility or emitting unit upon which construction was commenced, or that was installed, after November 23, 1968, that is not specifically excluded under [Rule III], and that has the potential to emit more than 25 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE III MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS (1) A Montana air quality permit is not required under [RULE II] for the following:

(a) residential fireplaces, barbecues, and similar devices for recreational, cooking, or heating use;

(b) mobile emitting units, including motor vehicles, trains, aircraft, and other such self-propelled vehicles;

(c) laboratory equipment used for chemical or physical analysis;

(d) any activity or equipment associated with the use of agricultural land or the planting, production, harvesting or storage of agricultural crops (this exclusion does not apply to the processing of agricultural products by commercial businesses);

(e) emergency equipment installed in hospitals or other public institutions or buildings for use when the usual sources of heat, power or lighting are temporarily unobtainable or unavailable;

(f) emergency equipment installed in industrial or commercial facilities for use when the usual sources of heat, power, or lighting are temporarily unobtainable or unavailable and when the loss of heat, power, or lighting causes, or is likely to cause, an adverse effect on public health or facility safety. Emergency equipment use extends only to those uses that alleviate such adverse effects on public health or facility safety;

(g) any activity or equipment associated with the construction, maintenance, or use of roads except emitting units for which a permit is required under [Rule II(1)(b) or (c)];

(h) open burning, which is regulated under ARM Title 17, chapter 8, subchapter 6, and an open burning permit may be required under that subchapter;

(i) drilling rig stationary engines and turbines that do not have the potential to emit more than 100 tons per year of any pollutant regulated under this chapter and that do not operate in any single location for more than 12 months;

(j) temporary process or emission control equipment, replacing malfunctioning process or emission control equipment, and meeting the requirements of ARM 17.8.110(7);

(k) routine maintenance, repair, or replacement of equipment and equipment used to perform routine maintenance, repair, or replacement.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE IV MONTANA AIR QUALITY PERMITS--EXCLUSION FOR DE MINIMIS CHANGES (1) A Montana air quality permit is not required under [RULE II] for de minimis changes as specified below:

(a) construction or changed conditions of operation at a facility for which a Montana air quality permit has been

issued that do not increase the facility's potential to emit by more than 15 tons per year of any pollutant except:

(i) any construction or changed conditions of operation at a facility that would violate any condition in the facility's existing Montana air quality permit or any applicable rule contained in this chapter is prohibited, except as allowed in (2);

(ii) any construction or changed conditions of operation at a facility that would qualify as a major modification of a major stationary source under subchapters 8, 9, or 10 of this chapter;

(iii) any construction or changed conditions of operation at a facility that would affect the plume rise or dispersion characteristics of the emissions in a manner that would cause or contribute to a violation of an ambient air quality standard or an ambient air increment, as defined in ARM 17.8.804;

(iv) any construction or improvement project with a potential to emit more than 15 tons per year may not be artificially split into smaller projects to avoid permitting under this subchapter; and

(v) emission reductions obtained through offsetting within a facility are not included when determining the potential emission increase from construction or changed conditions of operation, unless such reductions are made federally enforceable.

(b) The owner or operator of any facility making a de minimis change pursuant to (1)(a) shall notify the department if the change would include addition of a new emissions unit, a change in control equipment, stack height, stack diameter, stack flow, stack gas temperature, source location, or fuel specifications, or would result in an increase in source capacity above its permitted operation.

(c) The following are excluded from the notice requirements of (1)(b):

(i) day-to-day fluctuations of the parameters described in (1)(b), occurring as a result of the design or permitted operations of the facility, including startup and shutdown of emission sources at the facility; and

(ii) addition, modification, or replacement of pumps, valves, flanges and similar emission sources. The department shall develop, maintain, and update a list of emission sources it believes qualify for exclusion from the notice requirements. Upon request, the department shall provide a copy of the list to interested persons.

(d) If notice is required under (1)(b), the owner or operator shall submit the following information to the department in writing at least 10 days prior to startup or use of the proposed de minimis change or as soon as reasonably practicable in the event of an unanticipated circumstance causing the de minimis change:

(i) a description of the proposed de minimis change requiring notice, including the anticipated date of the change;

(ii) sufficient information to calculate the potential emissions resulting from the proposed de minimis change; and

(iii) if applicable, an explanation of the unanticipated circumstance causing the change.

(e) The notice requirements under (1)(d) do not supersede, or otherwise change, any requirements in 40 CFR Parts 60, 61, or 63.

(2) A Montana air quality permit may be amended pursuant to [Rule XIV], for changes made under (1)(a)(i) that would otherwise violate an existing condition in the permit. Conditions in the permit concerning control equipment specifications, operational procedures, or testing, monitoring, record keeping, or reporting requirements may be modified if the modification does not violate any statute, rule, or the state implementation plan. Conditions in the permit establishing emission limits, or production limits in lieu of emission limits, may be changed or added under (1)(a), if the owner or operator agrees to such changes or additions.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE V NEW OR MODIFIED EMITTING UNITS--PERMIT APPLICATION REQUIREMENTS (1) The owner or operator of a proposed new or modified facility or emitting unit that is subject to [Rule II], shall, no later than 180 days before construction begins, or if construction is not required, no later than 120 days before installation, modification, or operation begins, submit an application to the department for a Montana air quality permit on an application form provided by the department. The department may, for good cause shown, waive or shorten the time required for filing the application.

(2) The department may provide pre-application consultation and non-binding, advisory opinions regarding any potential issues identified by the owner or operator that may arise regarding the permit application.

(3) A permit application submitted pursuant to this subchapter must contain certification by a responsible official of truth, accuracy, and completeness. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete. The following persons are authorized to sign an application on behalf of the owner or operator of a new or modified facility or emitting unit(s):

(a) an application submitted by a corporation or a limited liability company must be signed by an individual specified in the corporate bylaws or the limited liability company operating agreement as having the authority to bind the corporation or limited liability company in contracts, liabilities, and other company obligations;

(b) an application submitted by a partnership or a sole proprietorship must be signed by a general partner or the proprietor respectively;

(c) an application submitted by a municipal, state, federal or other public agency must be signed by a principal executive officer, appropriate elected official, or other duly authorized employee; and

(d) an application submitted by an individual must be signed by the individual or the individual's authorized agent.

(4) An application for a Montana air quality permit must include the following:

(a) a map and diagram showing the location of the proposed new or modified facility or emitting unit(s). The map and diagram must also include the location of each associated stack, the property involved, the height and outline of associated buildings, and the height and outline of each associated stack;

(b) a description of the proposed new or modified facility or emitting unit(s), including data on expected production capacity, raw materials to be processed, and major equipment components;

(c) a description of any control equipment to be installed;

(d) a description of the composition, volume and temperatures of the effluent stream, including the nature and extent of air contaminants emitted, quantities and means of disposal of collected contaminants, and the air quality relationship of these factors to conditions created by existing stacks or emitting units or stacks associated with the proposed new or modified emitting unit(s);

(e) normal and maximum operating schedules;

(f) drawings, blueprints, specifications, or other information adequate to show the design and operation of process and air pollution control equipment involved;

(g) process flow diagrams showing material balances;

(h) a detailed schedule of construction or modification;

(i) a description of shakedown procedures to the extent shakedown is expected to affect emissions, and the anticipated duration of the shakedown period for each new or modified emitting unit;

(j) any other information requested by the department that is necessary for the department to review the application and determine whether the new or modified facility or emitting unit(s) will comply with applicable standards and rules;

(k) information regarding site characteristics necessary to conduct an assessment of impacts under the Montana Environmental Policy Act, 75-1-101, et seq., MCA, as required on the application form; and

(l) the appropriate air quality permit application fee required under ARM 17.8.504.

(5) An applicant is not required to submit information previously filed with the department. If an applicant does not want to submit information that has been submitted previously to the department, the applicant shall specify in the application the information previously submitted, and, wherever possible, shall specify the date upon which the

information was submitted. Any information the department determines is in its possession becomes part of the application.

(6) Section 75-2-105, MCA, specifies the procedure for filing a declaratory judgment action to establish the existence, and confidential status of, trade secret information provided in a permit application.

(7) An applicant for a permit shall notify the public of the application by legal publication in a newspaper of general circulation in the area affected by the application. The notice must be published within 10 days before, or after, submittal of the application. The form of the notice must be as provided to the applicant by the department.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE VI CONDITIONS FOR ISSUANCE OR DENIAL OF PERMIT

(1) When the department issues a Montana air quality permit, the permit must authorize the construction and operation of the facility or emitting unit subject to the conditions in the permit and to the requirements of this subchapter. The permit must contain any conditions necessary to assure compliance with the Clean Air Act of Montana and rules adopted under that Act.

(2) The permit may contain a schedule for specified permit conditions to become effective, subject to the time limits stated in [Rule XII(2)]. The department may extend a deadline specified in the schedule, but an extension may not exceed five years.

(3) A Montana air quality permit may not be issued for a new or modified facility or emitting unit unless the applicant demonstrates that the facility or emitting unit can be expected to operate in compliance with the Clean Air Act of Montana and rules adopted under that Act, the federal Clean Air Act and rules promulgated under that Act (as incorporated by reference in [Rule XVI]), and any applicable requirement contained in the Montana state implementation plan (as incorporated by reference in [Rule XVI]), and that it will not cause or contribute to a violation of any Montana or national ambient air quality standard.

(4) The department shall issue a Montana air quality permit for the following unless the department demonstrates that the emitting unit does not operate or is not expected to operate in compliance with applicable rules, standards, or other requirements:

(a) emitting units constructed or installed between November 23, 1968, and March 16, 1979; and

(b) emitting units constructed or installed before November 23, 1968, and modified between November 23, 1968, and March 16, 1979.

(5) In a Montana air quality permit, the department shall identify those conditions that are derived from state law, and are not derived from the federal Clean Air Act, 42

U.S.C. 7401, et seq., the Montana state implementation plan, or other federal air quality requirements. Compliance with these conditions is not required by the state implementation plan, and is not necessary for attainment or maintenance of federal ambient air quality standards. These conditions must be identified in the permit as "state-only," and are not intended by the department to be enforceable under federal law.

(6) Nothing in this subchapter obligates the department to issue a Montana air quality permit. The department may subsequently order cessation of initial construction activities, decide not to issue the permit, or issue a permit that diminishes or renders useless the value of work completed prior to permit issuance.

(7) If the department denies an application for a Montana air quality permit it shall notify the applicant in writing of the reasons for the permit denial and advise the applicant of the right to appeal the department's decision to the board as provided in 75-2-211, MCA. Service of the department's decision to deny a permit must be made as provided in the Montana Rules of Civil Procedure, except that the applicant may agree in writing to service by mail.

(8) If the department denies an application for a Montana air quality permit, it may not accept any further air quality permit application from the owner or operator for that project for which the permit was sought until:

(a) the time for requesting a hearing before the board has expired; or

(b) if a hearing before the board is requested, the board has issued a final decision in the matter; or

(c) the applicant has submitted additional information in writing that adequately addresses the reasons for denial.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE VII EMISSION CONTROL REQUIREMENTS (1) The owner or operator of a new or modified facility or emitting unit for which a Montana air quality permit is required by this subchapter shall install on the new or modified facility or emitting unit the maximum air pollution control capability that is technically practicable and economically feasible, except that:

(a) BACT must be utilized.

(i) Existing emitting units and those emitting units constructed or installed after March 16, 1979, that were not previously subject to this subchapter become subject to this rule when any modification to the emitting unit requires a Montana air quality permit, however, only the specific emitting unit that is modified becomes subject to this rule.

(b) The lowest achievable emission rate must be met to the extent required by ARM Title 17, chapter 8, subchapter 9, for those emitting units subject to that subchapter.

(2) The owner or operator of a new or modified facility or emitting unit for which a permit is required by this subchapter shall operate all equipment to provide the maximum air pollution control for which it was designed.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE VIII INSPECTION OF PERMIT (1) Current air quality permits must be made available for department inspection at the location of the facility or emitting unit for which the permit has been issued, unless the permittee and the department mutually agree on a different location.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE IX COMPLIANCE WITH OTHER REQUIREMENTS (1) This subchapter does not relieve any owner or operator of the responsibility for complying with any applicable federal or Montana statute, rule or board or court order, except as specifically provided in this subchapter.

(2) Issuance of a Montana air quality permit does not affect the responsibility of a permittee to comply with the applicable requirements of any control strategy contained in the Montana state implementation plan.

(3) A permittee may not commence operation of a facility or emitting unit if construction, modification or installation has been completed in such a manner that the facility or emitting unit cannot operate in compliance with applicable statutes, rules, or requirements specified in the permit.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE X REVIEW OF PERMIT APPLICATIONS (1) Except for applications subject to [Rule XI], when an application for a permit does not require an environmental impact statement, the application is not considered filed until the owner or operator has submitted to the department all required fees and all information and completed application forms.

(2) The department shall notify the applicant in writing within 30 days after receiving an application if an application is incomplete. The notice must list the reasons the application is considered incomplete, any additional information required, and the date by which the applicant must submit any additional required information. If the requested additional information is not submitted by the date specified by the department in the notice, the application is considered withdrawn unless the applicant requests in writing an extension of time for submission of the additional information. If the department receives additional application information, whether prior to a determination of completeness

or in response to a notice of incompleteness, the 30-day application completeness review period begins again.

(3) Within 40 days after receiving a complete application for a permit, the department shall make a preliminary determination as to whether the permit should be issued, issued with conditions, or denied.

(4) After making a preliminary determination, the department shall notify those members of the public who requested such notification subsequent to the notice required by [Rule V(7)] and the applicant of the department's preliminary determination. The notice must specify that comments may be submitted on the information submitted by the applicant and on the department's preliminary determination. The notice must also specify the following:

(a) that a complete copy of the application and the department's analysis of the application is available from the department;

(b) the date by which all comments on the preliminary determination must be submitted in writing, which must be within 15 days after the notice is mailed; and

(c) that unless the review period is extended pursuant to (5), a final decision must be made within 60 days after a complete application is submitted to the department as required by 75-2-211, MCA. The notice must specify the date upon which the 60-day review period expires, the person from whom a copy of the final decision may be obtained, and the procedure for requesting a hearing before the board concerning the department's final decision.

(5) The time for issuing a final decision may be extended for 30 days by written agreement of the department and the applicant. The department may grant additional 30-day extensions at the request of the applicant.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE XI ADDITIONAL REVIEW OF PERMIT APPLICATIONS

(1) When an application for a Montana air quality permit requires an environmental impact statement under the Montana Environmental Policy Act, 75-1-101, et seq., MCA, the procedures for public review are those required by the Montana Environmental Policy Act and the rules adopted by the board and department to implement the Act, ARM Title 17, chapter 4, subchapter 6, and 17.4.701 through 17.4.703.

(2) When an application for a Montana air quality permit is also an application for certification under the Major Facility Siting Act, public review is governed by the rules implementing that Act, ARM Title 17, chapter 20.

AUTH: 75-2-111, 75-2-204, 75-20-216, MCA
IMP: 75-2-204, 75-2-211, 75-20-216, MCA

RULE XII DURATION OF PERMIT (1) A Montana air quality permit is in effect until the permit is revoked under [Rule

XIII], amended under [Rule XIV], or modified under [Rule V]. Portions of an air quality permit may be revoked, amended, or modified without invalidating the remainder of the permit.

(2) A permit issued prior to construction or installation of a new or modified facility or emitting unit may provide that the permit or a portion of the permit will expire unless construction or installation is commenced within the time specified in the permit, which may not be less than one year or more than three years after the permit is issued.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE XIII REVOCATION OF PERMIT (1) The department may revoke a Montana air quality permit or any portion of a permit upon written request of the permittee, or for violation of any requirement of the Clean Air Act of Montana, rules adopted under that Act, the federal Clean Air Act and rules promulgated under that Act (as incorporated by reference in [Rule XVI]), or any applicable requirement contained in the Montana state implementation plan (as incorporated by reference in [Rule XVI]).

(2) The department shall notify the permittee in writing of its intent to revoke a permit or a portion of a permit. The department shall serve the notice as provided in Rule VI(7). The department's decision to revoke a permit or any portion of a permit becomes final when 15 days have elapsed after service of the notice unless the permittee requests a hearing before the board.

(3) When the department revokes a permit under this rule, the permittee may request a hearing before the board. A hearing request must be in writing and must be filed with the board within 15 days after service of the department's notice of intent to revoke the permit. Filing a request for a hearing postpones the effective date of the department's decision until issuance of a final decision by the board.

(4) A hearing under this rule is governed by the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE XIV ADMINISTRATIVE AMENDMENT TO PERMIT (1) The department may amend a Montana air quality permit, or any portion of a permit, for the following reasons:

(a) changes in any applicable rules adopted by the board;

(b) changes in operation that do not result in an increase in emissions. The owner or operator of a facility may not increase the facility's emissions beyond permit limits unless the increase meets the criteria in [Rule IV(1)(a)] for a de minimis change not requiring a permit, or unless the owner or operator applies for and receives another permit in

accordance with [Rule V], [Rule VI], [Rule VII], [Rule VIII] and [Rule IX], and with all applicable requirements in ARM Title 17, chapter 8, subchapters 8, 9, and 10;

(c) administrative errors in the permit that do not affect substantive provisions of the permit.

(2) The department shall notify the permittee in writing of any proposed amendments to the permit. The department shall serve the notice as provided for in [Rule VI(7)]. The permit is deemed amended in accordance with the notice when 15 days have elapsed after service of the notice unless the permittee requests a hearing before the board.

(3) When the department amends a permit under this rule, the permittee may request a hearing before the board. A hearing request must be in writing and must be filed with the board within 15 days after service of the department's notice of intent to amend the permit. Filing a request for hearing postpones the effective date of the department's decision until issuance of a final decision by the board.

(4) A hearing under this rule is governed by the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE XV TRANSFER OF PERMIT (1) A Montana air quality permit may be transferred from one location to another if:

(a) the department receives a complete notice of intent to transfer location, including:

(i) written notice of intent to transfer location on forms provided by the department; and

(ii) documentation that the permittee has published notice of the intended transfer by means of a legal publication in a newspaper of general circulation in the area to which the transfer is to be made. The notice must include a statement that public comment will be accepted by the department for 15 days after the date of publication and that comments should be addressed to: Air Quality Permitting Section, Air and Waste Management Bureau, Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901;

(b) the permitted facility will operate in the new location for less than one year;

(c) the permitted facility can be expected to operate in compliance with:

(i) the Clean Air Act of Montana and rules adopted under that Act, including the ambient air quality standards; and

(ii) the Montana state implementation plan.

(d) the owner or operator of the permitted facility complies with ARM Title 17, chapter 8, subchapters 9 and 10, as applicable.

(2) A Montana air quality permit may be transferred from one owner or operator to another if the department receives

written notice of intent to transfer, including the names and authorized signatures of the transferor and the transferee.

(3) The department may not approve or conditionally approve a permit transfer if approval would result in a violation of the Clean Air Act of Montana or rules adopted under that Act, including the ambient air quality standards. If the department does not approve, conditionally approve, or deny a permit transfer within 30 days after receipt of a complete notice of intent to transfer, as described in (1)(a) or (2), the transfer is deemed approved.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, MCA

RULE XVI INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference:

(a) 40 CFR Part 51, subpart I, specifying requirements for state programs for issuing Montana air quality permits;

(b) 40 CFR Part 51, Appendix M, specifying recommended test methods for state implementation plans;

(c) 40 CFR Part 52, subpart BB specifying the Montana state implementation plan for controlling air pollution in Montana;

(d) 40 CFR 52.21, specifying requirements for prevention of significant deterioration of air quality;

(e) 40 CFR Part 60, specifying standards of performance for new stationary sources;

(f) 40 CFR Part 61, specifying emission standards for hazardous air pollutants;

(g) Tables 4-1 and 4-3 of the Department of Environmental Quality Air Quality Health Risk Assessment Procedures/Model, January 1995; and

(h) 42 USC 7412, et seq., listing hazardous air pollutants.

(2) A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Air and Waste Management Bureau, Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained from:

(a) the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703) 321-8547, Internet: orders@ntis.fedworld.gov;

(b) the National Center for Environmental Publications and Information, (800)490-9198;

(c) the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328; and

(d) at the libraries of each of the 10 EPA regional offices.

(4) Copies of the CFR may be obtained from the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-211, 75-2-215, MCA

RULE XVII ADDITIONAL REQUIREMENTS FOR INCINERATORS

(1) An applicant for a Montana air quality permit for an incineration facility subject to 75-2-215, MCA, shall submit a human health risk assessment protocol and a human health risk assessment as part of the application. The human health risk assessment must demonstrate that the ambient concentrations of pollutants resulting from emissions from the incineration facility subject to 75-2-215, MCA, constitute no more than a negligible risk to the public health, safety, and welfare and to the environment. At a minimum, the human health risk assessment must meet the following requirements:

(a) The human health risk assessment must include an emissions inventory listing potential emissions of all pollutants specified in the federal Clean Air Act Hazardous Air Pollutants List (as defined in section 112(b) of the FCAA);

(b) A characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emitting unit at the facility must be submitted as part of the permit application;

(c) The human health risk assessment must address the impacts of all pollutants inventoried in (1)(a), except as provided in (1)(c)(i) and (ii). Pollutants may be excluded from the human health risk assessment if the department determines that exposure from inhalation is the only appropriate pathway to consider in the human health risk assessment and if:

(i) the potential to emit the pollutant is less than 1.28×10^{-13} grams per second, if the incineration facility subject to 75-2-215, MCA, has a stack height of at least two meters, a stack velocity of at least 0.645 meters per second, and a stack exit temperature of at least 800º F, and there is a distance of at least five meters from the stack to the property boundary; or

(ii) the ambient concentrations of the pollutants (calculated using the potential to emit; enforceable limits or controls may be considered) are less than the levels specified in Table 1 or Table 2.

(iii) The department shall periodically review accepted toxicity value databases to determine if the de minimis levels in (1)(c)(i) and (ii) should be updated.

(d) The human health risk assessment must address risks from all appropriate exposure pathways. For incineration facilities subject to 75-2-215, MCA, that do not emit or emit only minute amounts of hazardous air pollutants contained in Tables 4-1 or 4-2 of the department's health risk assessment procedures/model the application need address only impact from the inhalation exposure pathway and may use a department supplied screening model to assess human health risk;

(e) The human health risk assessment must address the human health risk impact of all hazardous air pollutants, as described in (1)(a), from the emitting unit or units that constitutes the incineration facility subject to 75-2-215, MCA, from all other existing incineration facilities subject to 75-2-215, MCA, at the facility, and from all other new or existing emitting units solely supporting any incineration facility subject to 75-2-215, MCA, such as fugitive emissions from fuel storage.

(i) Emissions from existing emitting units that partially support the incineration facility, but that do not change the type or amount of emissions allowed under any existing permit in effect at the time of the permit application, need not be considered in the human health risk assessment.

(ii) If an existing emitting unit, wholly or partially supporting the incineration facility, increases the types or amount of its emissions, so that a permit modification is required, that portion of the emissions increase attributable to the support of the incineration facility must be considered in the human health risk assessment;

(f) The health risk assessment must be performed in accordance with accepted human health risk assessment practices, or state or federal guidelines in effect at the time the human health risk assessment is performed, and must address impacts on sensitive populations. The human health risk must be calculated using the emitting unit's potential to emit. Enforceable limits or controls may be considered. The human health risk assessment procedures used may be modified if site-specific conditions warrant use of alternative procedures to appropriately assess human health risk;

(g) As part of the application, the applicant shall submit to the department a human health risk assessment protocol detailing the human health risk assessment procedures. At a minimum, the human health risk assessment protocol must include:

(i) a description of the pollutants considered in the analysis;

(ii) methods used in compiling the emission inventory;

(iii) ambient dispersion models and modeling procedures used;

(iv) toxicity values for each pollutant;

(v) exposure pathways and assumptions;

(vi) any statistical analysis applied; and

(vii) any other information necessary for the department to review the adequacy of the human health risk assessment;

(h) A summary of the human health risk assessment protocol must be included in the permit analysis. The summary must:

(i) clearly define the scope of the risk assessment;

(ii) describe the exposure pathways used;

(iii) specify any pollutants identified in the emission inventory that were not required to be included in the human health risk assessment;

(iv) state whether, and to what extent, the impacts of existing emissions, or the synergistic effect of combined pollutants, were considered in the final human health risk level calculated to determine compliance with the negligible risk standard; and

(v) state that environmental effects unrelated to human health were not considered in determining compliance with the negligible risk standard, but were evaluated as required by the Montana Environmental Policy Act, in determining compliance with all applicable rules or other requirements requiring protection of public health, safety, and welfare and the environment;

(i) The department may impose additional requirements for the human health risk assessment, on a case-by-case basis, if the department reasonably believes that the type or amount of material being incinerated, the proximity to sensitive populations, short-term emissions variations, acute health impact, or the local topographical or ventilation conditions require a more detailed health risk assessment to adequately define the potential public health impact. Additional requirements for the human health risk assessment may include specific emission inventory procedures for determining emissions from the incineration facility subject to 75-2-215, MCA, use of more sophisticated air dispersion models or modeling procedures and consideration of additional exposure pathways.

TABLE 1

CAS #	CHEMICAL	CANCER ANNUAL ($\mu g/m^3$)
75070	Acetaldehyde	4.5455e-02
79061	Acrylamide	7.6923e-05
107131	Acrylonitrile	1.4706e-03
1332214	Asbestos	5.1546e-04
71432	Benzene	1.2048e-02
92875	Benzidine	1.4925e-06
117817	Bis(2-Ethylhexyl) Phthalate (DEHP)	4.1667e-02
542881	Bis(Chloromethyl) Ether	1.6129e-06
75252	Bromoform	9.0909e-02
106990	1,3-Butadiene	3.5714e-04
56235	Carbon Tetrachloride	6.6667e-03
57749	Chlordane	2.7027e-04
67663	Chloroform	4.3478e-03
126998	Chloroprene	7.6923e-01
132649	Dibenzofurans	2.6316e-09
96128	1,2-Dibromo-3-Chloropropane	5.0000e-05
106467	1,4-Dichlorobenzene (p)	9.0909e-03
91941	3,3-Dichlorobenzidene	2.9412e-04
111444	Dichloroethyl Ether	3.0303e-04
123911	1,4-Dioxane (1,4-Diethyleneoxide)	1.2987e-02

CAS #	CHEMICAL	CANCER ANNUAL ($\mu g/m^3$)
122667	1,2-Diphenylhydrazine	4.5455e-04
106898	Epichlorohydrin	8.3333e-02
51796	Ethyl Carbamate (Urethane)	3.4483e-04
106934	Ethylene Dibromide	4.5455e-04
107062	Ethylene Dichloride	3.8462e-03
75218	Ethylene Oxide	1.1364e-03
50000	Formaldehyde	7.6923e-03
76448	Heptachlor	7.6923e-05
118741	Hexachlorobenzene	2.1739e-04
87683	Hexachlorobutadiene	4.5455e-03
67721	Hexachloroethane	2.5000e-02
302012	Hydrazine	2.0408e-05
58899	Lindane (All Isomers)	9.0909e-05
75092	Methylene Chloride	2.1277e-01
62759	N-Nitrosodimethylamine	7.1429e-06
87865	Pentachlorophenol	2.1739e-02
1336363	Polychlorinated Biphenyls	7.1429e-05
75569	Propylene Oxide	2.7027e-02
1746016	2,3,7,8-TCDD	2.6316e-09
79345	1,1,2,2-Tetra-chloroethane	1.7241e-03
127184	Tetrachloro-ethylene (Perch)	1.6949e-02
8001352	Toxaphene	3.1250e-04
79005	1,1,2-Trichloroethane	6.2500e-03
79016	Trichloroethylene	5.0000e-02
88062	2,4,6-Tri-chlorophenol	3.2258e-02
75014	Vinyl Chloride	1.2821e-03
75354	Vinylidene Chloride	2.0000e-03
	Arsenic Compounds	2.3256e-05
	Beryllium Compounds	4.1667e-05
	Cadmium Compounds	5.5556e-05
	Chromium Compounds	8.3333e-06
	Coke Oven Emissions	1.6129e-04
	Nickel Compounds	3.8462e-04
	Polycylic Organic Matter	
56553	Benz(a)anthracene	5.8824e-05
205992	Benzo(b)fluoranthene	5.8824e-05
207089	Benzo(k)fluoranthene	5.8824e-05
50328	Benzo(a)pyrene	5.8824e-05
53703	Dibenz(a,h)anthracene	5.8824e-05
193395	Indeno(1,2,3-cd) pyrene	5.8824e-05

TABLE 2

CAS #	CHEMICAL	NON-CANCER CHRONIC ANNUAL ($\mu g/m^3$)	NON-CANCER ACUTE ANNUAL ($\mu g/m^3$)
75070	Acetaldehyde	9.0000e-02	
107028	Acrolein	2.2000e-04	2.5000e-02
79061	Acrylamide	7.0000e-03	
79107	Acrylic Acid	1.0000e-02	
107131	Acrylonitrile	2.0000e-02	
107051	Allyl Chloride	1.0000e-02	
62533	Aniline	1.0000e-02	
71432	Benzene	7.1000e-01	
92875	Benzidine	1.0000e-01	
100447	Benzyl Chloride	1.2000e-01	5.0000e-01
117817	Bis(2-Ethylhexyl) Phthalate (DEHP)	7.0000e-01	
75150	Carbon Disulfide	7.0000e+00	
56235	Carbon Tetra-chloride	2.4000e-02	1.9000e+00
7782505	Chlorine	7.1000e-01	2.3000e-01
532274	2-Chloroaceto-phenone	3.0000e-04	
108907	Chlorobenzene	7.0000e-01	
67663	Chloroform	3.5000e-01	
126998	Chloroprene	1.0000e-02	
1319773	Cresols/Cresylic Acid	1.8000e+00	
95487	o-Cresol	1.8000e+00	
108394	m-Cresol	1.8000e+00	
106445	p-Cresol	1.8000e+00	
132649	Dibenzofurans	3.5000e-08	
96128	1,2-Dibromo-3-Chloropropane	2.0000e-03	
106467	1,4-Dichloro-benzene (p)	8.0000e+00	
542756	1,3-Dichloro-propene	2.0000e-01	
62737	Dichlorvos	5.0000e-03	
68122	Dimethyl Formamide	3.0000e-01	
123911	1,4-Dioxane (1,4-Diethyleneoxide)	4.0000e-02	2.0000e+01
106898	Epichlorohydrin	1.0000e-02	
106887	1,2-Epoxybutane	2.0000e-01	
140885	Ethyl Acrylate	4.8000e-01	
100414	Ethyl Benzene	1.0000e+01	
75003	Ethyl Chloride (Chloroethane)	1.0000e+02	
106934	Ethylene Dibromide	4.6000e-02	
107062	Ethylene Di-chloride	9.5000e-01	
75218	Ethylene Oxide	6.0000e+00	

CAS #	CHEMICAL	NON-CANCER CHRONIC ANNUAL ($\mu g/m^3$)	NON-CANCER ACUTE ANNUAL ($\mu g/m^3$)
50000	Formaldehyde	3.6000e-02	3.7000e+00
118741	Hexachlorobenzene	2.8000e-02	
77474	Hexachloro-cyclopentadiene	2.4000e-03	
822060	Hexamethylene-1,6-Diisocyanate	1.0000e-04	
110543	Hexane	2.0000e+00	
302012	Hydrazine	2.4000e-03	
7647010	Hydrochloric Acid	2.0000e-01	3.0000e+01
7664393	Hydrogen Fluoride (HF Acid)	5.9000e-02	5.8000e+00
58899	Lindane (All Isomers)	1.0000e-02	
108316	Maleic Anhydride	2.4000e-02	1.0000e-01
67561	Methanol	6.2000e+00	
74839	Methyl Bromide (Bromomethane)	5.0000e-02	
71556	Methyl Chloroform	3.2000e+00	1.9000e+03
78933	Methyl Ethyl Ketone (2-Butanone)	1.0000e+01	
624839	Methyl Isocyanate	3.6000e-03	
80626	Methyl Metha-crylate	9.8000e+00	
1634044	Methyl Tert Butyl Ether	3.0000e+01	
75092	Methylene Chloride	3.0000e+01	3.5000e+01
101688	Methylene Diphenyl Diisocyanate	2.0000e-04	
101779	4,4'-Methylene-dianiline	1.9000e-02	
91203	Naphthalene	1.4000e-01	
98953	Nitrobenzene	1.7000e-02	
79469	2-Nitropropane	2.0000e-01	
87865	Pentachlorophenol	2.0000e-03	
108952	Phenol	4.5000e-01	
75445	Phosgene	1.2000e+00	
7803512	Phosphine	3.0000e-03	
7723140	Phosphorus	7.0000e-04	
85449	Phthalic Anhydride	7.0000e+01	
1336363	Polychlorinated Biphenyls	1.2000e-02	
78875	Propylene Di-chloride	4.0000e-02	
75569	Propylene Oxide	3.0000e-01	1.0000e+01
100425	Styrene	1.0000e+01	
1746016	2,3,7,8-TCDD	3.5000e-08	
127184	Tetrachloro-ethylene (Perch)	3.5000e-01	6.8000e+01
108883	Toluene	4.0000e+00	

CAS #	CHEMICAL	NON-CANCER CHRONIC ANNUAL (µg/m³)	NON-CANCER ACUTE ANNUAL (µg/m³)
584849	2,4-Toluene Di-isocyanate	7.0000e-04	
79016	Trichloroethylene	6.4000e+00	
121448	Triethylamine	7.0000e-02	
108054	Vinyl Acetate	2.0000e+00	
593602	Vinyl Bromide	3.0000e-02	
75014	Vinyl Chloride	2.6000e-01	
75354	Vinylidene Chloride	3.2000e-01	
1330207	Xylenes (Isomers and Mixture)	3.0000e+00	4.4000e+01
	Antimony Compounds	2.0000e-03	
	Arsenic Compounds	5.0000e-03	
	Beryllium Compounds	4.8000e-05	
	Cadmium Compounds	3.5000e-02	
	Chromium Compounds	2.0000e-05	
	Cyanide Compounds	7.0000e-01	3.3000e+01
	Ethyl Glycol But Ether	2.0000e-01	
	Ethyl Glycol Ethyl Ether	3.7000e+00	
	Ethyl Gly MonoBut Ether	1.5000e+01	
	Ethyl Gly Mono-Ethyl Ether	2.0000e+00	
	Ethyl Gly Ethyl Ether Acetate	6.4000e-01	
	Ethyl Glycol Methyl Ether	2.0000e-01	3.2000e+00
	Ethyl Gly Methyl Ether Acetate	5.7000e-01	
	Ethyl Gly Mono-Ethyl Ether Acetate	1.6000e+01	
	Lead Compounds	1.5000e-02	
	Manganese Com-pounds	5.0000e-04	
	Mercury Compounds	3.0000e-03	3.0000e-01
	Fine Mineral Fibers	2.4000e-01	
	Nickel Compounds	2.4000e-03	1.0000e-02
	Selenium Compounds	5.0000e-03	2.0000e-02

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-204, 75-2-211, 75-2-215, MCA

4. The rules proposed for repeal are as follows:

17.8.701 DEFINITIONS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, 75-2-215, MCA), located at page 17-421, Administrative Rules of Montana. This rule would be replaced by RULE I, DEFINITIONS.

17.8.702 INCORPORATION BY REFERENCE (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-211, 75-2-215, MCA), located at page 17-424, Administrative Rules of Montana. This rule would be replaced by RULE XVI, INCORPORATION BY REFERENCE.

17.8.704 GENERAL PROCEDURES FOR AIR QUALITY PRECONSTRUCTION PERMITTING (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-427, Administrative Rules of Montana. This rule would be replaced by RULE II, MONTANA AIR QUALITY PERMITS--WHEN REQUIRED.

17.8.705 WHEN PERMIT REQUIRED--EXCLUSIONS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-429, Administrative Rules of Montana. This rule would be replaced by RULE II, MONTANA AIR QUALITY PERMITS--WHEN REQUIRED; RULE III, MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS; and RULE IV, MONTANA AIR QUALITY PERMITS--EXCLUSION FOR DE MINIMIS CHANGES.

17.8.706 NEW OR ALTERED SOURCES AND STACKS--PERMIT APPLICATION REQUIREMENTS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, 75-2-215, MCA), located at page 17-431, Administrative Rules of Montana. This rule would be replaced by RULE V, NEW OR MODIFIED EMITTING UNITS--PERMIT APPLICATION REQUIREMENTS; and RULE XVII, ADDITIONAL REQUIREMENTS FOR INCINERATORS.

17.8.707 WAIVERS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-439, Administrative Rules of Montana. This rule would be replaced by RULE V, NEW OR MODIFIED EMITTING UNITS--PERMIT APPLICATION REQUIREMENTS.

17.8.710 CONDITIONS FOR ISSUANCE OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-441, Administrative Rules of Montana. This rule would be replaced by RULE VI, CONDITIONS FOR ISSUANCE AND DENIAL OF PERMIT; and RULE IX, COMPLIANCE WITH OTHER REQUIREMENTS.

17.8.715 EMISSION CONTROL REQUIREMENTS (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-443, Administrative Rules of Montana. This rule would be replaced by RULE VII, EMISSION CONTROL REQUIREMENTS.

17.8.716 INSPECTION OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-443, Administrative Rules of Montana. This rule would be replaced by RULE VIII, INSPECTION OF PERMIT.

17.8.717 COMPLIANCE WITH OTHER STATUTES AND RULES (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-443, Administrative Rules of Montana. This rule would be replaced by RULE IX, COMPLIANCE WITH OTHER REQUIREMENTS.

17.8.720 PUBLIC REVIEW OF PERMIT APPLICATIONS (AUTH: 75-2-111, 75-2-204, 75-20-216(3), MCA; IMP: 75-2-204, 75-2-211, 75-20-216(3), MCA), located at page 17-445, Administrative Rules of Montana. This rule would be replaced by RULE V, NEW OR MODIFIED EMITTING UNITS--PERMIT APPLICATION REQUIREMENTS; RULE X, REVIEW OF PERMIT APPLICATIONS; and RULE XI, ADDITIONAL REVIEW OF PERMIT APPLICATIONS.

17.8.730 DENIAL OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-449, Administrative Rules of Montana. This rule would be replaced by RULE VI, CONDITIONS FOR ISSUANCE AND DENIAL OF PERMIT.

17.8.731 DURATION OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-449, Administrative Rules of Montana. This rule would be replaced by RULE XII, DURATION OF PERMIT.

17.8.732 REVOCATION OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-449, Administrative Rules of Montana. This rule would be replaced by RULE XIII, REVOCATION OF PERMIT.

17.8.733 MODIFICATION OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-450, Administrative Rules of Montana. This rule would be replaced by RULE XIV, ADMINISTRATIVE AMENDMENT TO PERMIT.

17.8.734 TRANSFER OF PERMIT (AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA), located at page 17-451, Administrative Rules of Montana. This rule would be replaced by RULE XV, TRANSFER OF PERMIT.

REASON: The Board is proposing to repeal ARM Title 17, chapter 8, subchapter 7, "Permit, Construction and Operation of Air Contaminant Sources," and adopt a new subchapter covering the same subjects. The Board is proposing to repeal the existing rules and adopt new rules because of the extent of the necessary revisions to the rules.

In the past, there has been considerable confusion among the regulated community and the public concerning the meaning of the air quality preconstruction permit rules. The proposed new rules would clarify permit requirements and are necessary to make the rules more understandable. The Department of Environmental Quality developed the proposed new rules in conjunction with a working group of representatives of the regulated community and organizations interested in air quality issues.

New Rule I, "Definitions," would replace existing ARM 17.8.701, "Definitions," and incorporate new terms used in the proposed new rules. For clarity, the phrases "emitting unit" and "facility" would be substituted for the existing term "source." References in the current rules to "stacks" would be eliminated because the Department regulates stacks as part of the associated emitting units, so separate references to stacks are not necessary. For clarity, the definition of "construct" or "construction" would be revised to include examples of activities that are considered to constitute initiation of construction. Definitions of "lowest achievable emission rate" or "LAER" and "major emitting facility" would be deleted because the phrase "major emitting facility" no longer would be used in the rules, and the phrase "lowest achievable emission rate" or "LAER" already is defined in ARM 17.8.901(10). The new rule would add necessary definitions for the following terms and phrases used in the proposed new rules: "day"; "emitting unit"; "facility"; "install" or "installation"; "modify"; "Montana air quality permit"; "residential, institutional, or commercial"; and "routine."

New Rule II, "Montana Air Quality Permits--When Required," would replace existing ARM 17.8.704, "General Procedures For Air Quality Preconstruction Permitting," and portions of existing ARM 17.8.705, "When Permit Required--Exclusions." The new rule would specify the sources of air contaminants that are subject to the permit requirements. The new rule also would substitute a new name for the permit, "Montana air quality permit," in place of the current name, "preconstruction permit." The current name has been confusing to the regulated community, and the change is necessary to avoid the incorrect assumption that the permit applies only to construction.

New Rule III, "Montana Air Quality Permits--General Exclusions," would replace portions of existing ARM 17.8.705, "When Permit Required--Exclusions." The new rule would specify the air contaminant sources that are excluded from the permit requirement. In the existing rules, the exclusions are combined with applicability provisions in ARM 17.8.705. Under the new rule, the following sources would be deleted from the list of excluded sources and would require a Montana air quality permit if the subchapter otherwise applies to the source: food service establishments; sources for which emissions are calculated by BTU heat input; and ventilation systems for animal housing. The Board is proposing to delete these exclusions because it believes that any operation with potential emissions above the general 25 ton per year threshold should be subject to the air quality permit requirements. Most food service establishments still would be excluded under the general 25 ton per year exclusion. New Rule III also would include a provision clarifying when emergency equipment is excluded from the permit requirement. For clarity, equipment used for routine maintenance, repair, or replacement would be added to the list of exclusions.

New Rule IV, "Montana Air Quality Permits--Exclusion For De Minimis Changes," would replace the portions of existing ARM 17.8.705, "When Permit Required--Exclusions," that include the exclusion from the permit requirement for de minimis changes. The exclusion now is included with other exclusions and applicability provisions in ARM 17.8.705. New Rule IV(2), along with New Rule XIV(3), would clarify that the Department may amend a permit to change or add permit conditions, related to a de minimis change, if the owner or operator agrees to the change or addition and would clarify that only the permittee may request a hearing before the Board concerning a permit amendment that is related to a de minimis change, and that is initiated by the Department.

New Rule V, "New Or Modified Emitting Units--Permit Application Requirements," would replace portions of existing ARM 17.8.706, "New Or Altered Sources And Stacks--Permit Application Requirements," existing ARM 17.8.707, "Waivers," and portions of existing ARM 17.8.720, "Public Review Of Permit Applications." The new rule would clarify that the Department is not obligated to issue an air quality permit upon receipt of an application, clarify the requirement that permit applications be certified for completeness and accuracy, and clarify the information that must be included in descriptions of shakedown procedures. The existing requirements for submitting "post application" information would be deleted. A new provision would advise readers of the statutory procedures for maintaining the confidentiality of trade secret information that may be included in a permit application.

New Rule VI, "Conditions For Issuance And Denial Of Permit," would replace portions of existing ARM 17.8.710, "Conditions For Issuance Of Permit," and existing ARM 17.8.730, "Denial Of Permit." The new rule would specify the conditions for issuance or denial of a permit application. Existing ARM 17.8.710(3), which prohibits operation unless the applicant demonstrates that construction has occurred in compliance with the permit, would be moved to New Rule IX. New Rule VI also would include provisions for identifying federally enforceable and state-only conditions in a permit. This is necessary because the state should have exclusive enforcement authority concerning permit conditions that are necessary only to meet state requirements, but not federal requirements. Without this specification in the permit, permit conditions become federally enforceable by virtue of the permit becoming part of the State Implementation Plan.

New Rule VII, "Emission Control Requirements," would replace existing ARM 17.8.715, "Emission Control Requirements." The new rule would clarify that emission control requirements, including best available control technology (BACT), apply to previously unpermitted, older units that are modified in a manner requiring an air quality permit.

New Rule VIII, "Inspection Of Permit," would replace existing ARM 17.8.716, "Inspection Of Permit." The new rule

would add a provision specifying that the owner or operator and the Department may mutually agree on a location other than the permitted facility or emitting unit for making the air quality permit available for inspection. The present rule requires the owner or operator to maintain the permit at the location of the permitted facility. The proposed new provision could be more convenient for owners and operators of multiple facilities, such as natural gas compressor stations, that are subject to separate permits, and would be more convenient for Department inspectors in the field who could review multiple permits issued to an owner or operator without having to travel to each permitted location.

New Rule IX, "Compliance With Other Requirements," would replace portions of existing ARM 17.8.710, "Conditions For Issuance Of Permit," and existing ARM 17.8.717, "Compliance With Other Statutes And Rules." The new rule would clarify the Department's authority to prohibit operation of a facility or emitting unit if construction has occurred in a manner such that the facility cannot operate in compliance with applicable statutes, rules or permit requirements.

New Rule X, "Review Of Permit Applications," would replace portions of existing ARM 17.8.720, "Public Review Of Permit Applications." The new rule would clarify the procedure for Department review of air quality permit applications, including clarifying that the time for Department review of a permit application does not begin until the Department receives a complete application.

New Rule XI, "Additional Review Of Permit Applications," would, without substantive change, replace portions of existing ARM 17.8.720, "Public Review Of Permit Applications."

New Rule XII, "Duration Of Permit," would replace existing ARM 17.8.731, "Duration Of Permit." The new rule also would reflect the Department's authority under proposed New Rule XIII to revoke all, or only a portion, of a permit.

New Rule XIII, "Revocation Of Permit," would replace existing ARM 17.8.732, "Revocation Of Permit." In addition to including the existing procedures for revoking a permit, the new rule would add authority for the Department to revoke only a portion of a permit and would provide procedures for permit revocation upon the request of the owner or operator. Authority to revoke only a portion of a permit is necessary to allow an owner or operator to continue to operate part of a facility when only part of the permit is no longer necessary or valid. Adding authority for the owner or operator to request revocation is necessary to avoid the Department having to initiate revocation proceedings when the owner or operator no longer wishes to operate the facility, or part of a facility, and continue to be subject to air quality permit fees.

New Rule XIV, "Administrative Amendment To Permit," would replace existing ARM 17.8.733, "Modification Of Permit." For clarity, under the new rule, the term "amend" would be substituted for the term "modify." The new rule also would provide the Department with authority to amend a permit to

correct administrative errors made in drafting the permit. This is necessary to provide the Department with authority to correct administrative errors made in permit drafting without having to wait until the permittee applies for a new permit for the facility.

New Rule XV, "Transfer Of Permit," would replace existing ARM 17.8.734, "Transfer Of Permit." The new rule would clarify that the Department may deny transfer of a permit only upon determining that the transfer would result in violation of air quality statutes or rules. This revision is necessary to clarify that the Department does not have statutory authority to deny a permit transfer based upon non-air quality factors that the Department is required to consider under the Montana Environmental Policy Act (MEPA).

New Rule XVI, "Incorporation By Reference," would replace existing ARM 17.8.702, "Incorporation By Reference," without substantive change, except for placing the incorporations of federal regulations in numerical order, for easier reference.

New Rule XVII, "Additional Requirements For Incinerators," would, without substantive change, replace the existing requirements in ARM 17.8.706(5), concerning air quality permits for incinerators.

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, faxed to (406) 444-4386 or emailed to the Board Secretary at "ber@state.mt.us", to be received no later than 5:00 p.m. April 3, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

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

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

faxed to the office at (406) 444-4386, emailed to the Board Secretary at "ber@state.mt.us" or may be made by completing a request form at any rules hearing held by the Board.

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

BOARD OF ENVIRONMENTAL REVIEW

By: *Joseph W. Russell*
Joseph W. Russell, M.P.H.,
Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State February 4, 2002.

**BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA**

In the matter of the adoption of a rule authorizing reimbursement to counties for detention of Indian youth	)	NOTICE OF PROPOSED ADOPTION
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 18, 2002, the Board of Crime Control proposes to adopt a rule authorizing reimbursement to counties for costs associated with detention of Indian youth.

2. The Board of Crime Control 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 Justice no later than 5:00 p.m. on February 25, 2002, to advise us of the nature of the accommodation that you need. Please contact Ali Sheppard, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; FAX (406) 444-3549.

3. The proposed rule provides as follows:

RULE I REIMBURSEMENTS TO COUNTIES FOR TRIBAL USE OF DETENTION SERVICES (1) The board may reimburse counties for detention costs of Indian youth placed in a regional youth detention facility or a county detention facility pursuant to an order of a tribal court and approved by the regional detention board as part of the regional plan.

(2) Reimbursements under (1) may only be made for Indian youth placements that are in compliance with the requirements of state law and 42 U.S.C. 5632, 42 U.S.C. 5633(a)(21) and U.S.C. 5674.

AUTH: 41-5-1908, MCA
IMP: 41-5-1902, 41-5-1904, MCA

4. This rule is proposed for adoption to clarify the Montana Board of Crime Control's responsibility to reimburse counties for tribal use of detention services. Counties are required to provide youth detention services to assure that youth are not detained with adults and are provided with the needed educational programs during their detention. The Montana Board of Crime Control provides grant money to the counties and regions to assist in paying for these services. According to federal law tribal member youth are Montana citizens and are entitled to the same state services as other Montana youth. The language in the current statutes does not appear to contemplate whether the Montana Board of Crime

Control may grant money directly to the Tribe, it limits grant recipients to counties through their region. Rule I authorizes the Board of Crime Control to provide reimbursement to counties and regions for the detention of Indian tribal youth. Subsection (1) of proposed Rule I coordinates the reimbursement process with the regional planning. Subsection (2) of proposed Rule I ensures that Indian youth placements under tribal court orders to a regional or county youth detention facility do not violate state or federal law relating to the detention of a juvenile.

5. Concerned persons may submit their data, views, or arguments concerning the proposed adoption in writing to Ali Sheppard, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401, to be received no later than March 14, 2002.

6. If persons who are directly affected by the proposed adoption wish to submit their data, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request, along with any written comments to Ali Sheppard, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401. The comments must be received no later than March 14, 2002.

7. If the agency receives request for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the administrative rule review committee of the legislature; 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. Ten percent of those persons directly affected have been determined to be 6 based upon the 7 tribes and 56 counties in Montana.

8. The Department of Justice 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 the Board of Crime Control. Such written request may be mailed or delivered to the Office of the Attorney General, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620, faxed to the office at (406) 444-3549, e-mailed to asheppard@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

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

By: /s/ Jim Oppedahl
JIM OPPEDAHL, Director
Board of Crime Control

/s/ Ali Sheppard
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State February 4, 2002.

**BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 23.16.102, 23.16.103, 23.16.502, 23.16.503, 23.16.1716, 23.16.1914, 23.16.1915, 23.16.1916, 23.16.1918, and 23.16.2001 concerning forms used by the department in regulating gambling, gambling applications, and video gambling machine testing fees	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 29, 2002, the Department of Justice proposes to amend ARM 23.16.102, 23.16.103, 23.16.502, 23.16.503, 23.16.1716, 23.16.1914, 23.16.1915, 23.16.1916, 23.16.1918 and 23.16.2001 concerning forms used by the department in regulating gambling, gambling applications, and video gambling machine testing fees.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on March 1, 2002, to advise us of the nature of the accommodation that you need. Please contact Kathy Fisher, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT, 59620-1424; (406) 444-1973; FAX (406) 444-9157; or email kfisher@state.mt.us.

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

23.16.102 APPLICATION FOR GAMBLING LICENSE - LICENSE FEE

(1) through (3) remain the same.

(4) Forms 1 through 3 and 10, as the forms read on ~~November 3, 1997~~ April 1, 2002, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, ~~Montana~~ MT 59620-1424.

(5) remains the same.

AUTH: 23-5-115, MCA
IMP: 23-5-115, 23-5-177, MCA

23.16.103 INVESTIGATION OF APPLICANTS, FINGERPRINTS MAY BE REQUIRED - DISCLOSURE FROM NONINSTITUTIONAL LENDER

(1) and (2) remain the same.

(3) The department may require any noninstitutional lender to complete a document (form 13) authorizing examination and

release of information and (form 10) a personal history statement on the lender, as well as any contract, statement or other document from the lender deemed necessary to assess the suitability of an applicant's funding source as required in 23-5-176, MCA. The document must be signed and dated by the lender and attested to by a notary public. Form 13 and form 10 as the forms read on ~~November 3, 1997~~ April 1, 2002, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, ~~Montana~~ MT 59620-1424.

AUTH: 23-5-115, MCA
IMP: 23-5-115, MCA

23.16.502 APPLICATION FOR OPERATOR LICENSE (1) All applicants shall submit the following information on forms 5 and 5a, as those forms read on ~~November 3, 1997~~ April 1, 2002, which are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, ~~Montana~~ MT 59620-1424:

(a) through (2) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-115, 23-5-118, 23-5-176, 23-5-177, MCA

23.16.503 APPLICATION PROCESSING FEE (1) remains the same.

(a) ~~$50~~ $300 if the applicant is a nonprofit organization;

(b) ~~$400~~ $800 if the applicant is a sole proprietorship; or

(c) ~~$500~~ $1,000 if the applicant is a partnership or corporation.

(2) through (4) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-177, MCA

23.16.1716 SPORTS TAB GAME SELLER LICENSE (1) remains the same.

(a) sports tab game seller license application. Forms 20 and 20a as the forms read on ~~November 3, 1997~~ April 1, 2002, are incorporated by reference and available upon request from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, ~~Montana~~ MT 59620-1424;

(b) through (4) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-115, 23-5-502, 23-5-503, MCA

23.16.1914 DISTRIBUTOR'S LICENSE (1) remains the same.

(a) a distributor's license application, forms 17 and 17a, as the forms read on ~~November 3, 1997~~ April 1, 2002, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, ~~Montana~~ MT 59620-1424;

(b) through (3) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-115, 23-5-128, MCA

23.16.1915 ROUTE OPERATOR'S LICENSE (1) remains the same.
(a) a route operator license application, forms 17 and 17a, as the forms read on ~~November 3, 1997~~ April 1, 2002, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, ~~Montana~~ MT 59620-1424;
(b) through (3) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-115, 23-5-129, MCA

23.16.1916 MANUFACTURER'S LICENSE (1) remains the same.
(a) a manufacturer's license application, forms 17 and 17a, as the forms read on ~~November 3, 1997~~ April 1, 2002, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, ~~Montana~~ MT 59620-1424;
(b) through (3) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-115, 23-5-625, MCA

23.16.1918 VIDEO GAMBLING MACHINES TESTING FEES
(1) through (1)(b) remain the same.
(i) video gambling machines, ~~$2,000.00~~ $3,000;
(ii) modification to a machine that alters the play or operation of the machine and requires approval, ~~$200.00~~ $300.
(2) This account will be charged at the rate of ~~$50.00~~ $75 per hour.

AUTH: 23-5-115, MCA
IMP: 23-5-631, MCA

23.16.2001 MANUFACTURER OF ILLEGAL GAMBLING DEVICES - LICENSE - FEE - REPORTING REQUIREMENTS - INSPECTION OF RECORDS – REPORTS (1) remains the same.
(a) a manufacturer license application, form 17, as the form read on ~~November 3, 1997~~ April 1, 2002, is incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, ~~Montana~~ MT 59620-1424;
(b) through (9) remain the same.

AUTH: 23-5-115, 23-5-152, MCA
IMP: 23-5-115, 23-5-152, 23-5-611, 23-5-614, 23-5-621, 23-5-625, 23-5-631, MCA

4. The department intends to make these amendments effective April 1, 2002.

5. RATIONALE: (a) ARM 23.16.102, 23.16.103, 23.16.502, 23.16.1716, 23.16.1914, 23.16.1915, 23.16.1916 and 23.16.2001 are being amended to update forms used by the department in regulating gambling that have been incorporated by reference in earlier adopted rules.

(b) ARM 23.16.503 is being amended in order to collect a more reasonable estimate of the actual costs incurred by the department when processing gambling licenses when the application is filed.

(c) ARM 23.16.1918 is being amended to increase the hourly rate the department charges video gambling machine manufacturers to test and approve machines and machine modifications to keep pace with the cost of testing. By statute, 23-5-631, MCA manufacturers are to pay for the cost of testing machines.

6. Concerned persons may submit their data, views or arguments concerning the proposed amendments in writing to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424. Any comments must be received no later than March 14, 2002.

7. If persons who are directly affected by the proposed amendments wish to present their data, views or 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 Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424. A written request for hearing must be received no later than March 14, 2002.

8. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected have been determined to be 182 persons based on the 1823 licensed operators and route operators in Montana.

9. The Department of Justice 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 of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such

written request may be mailed or delivered to Ali Sheppard, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, ATTN: Ali Sheppard, e-mailed to asheppard@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department of Justice.

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

11. ARM 23.16.503. The result of increasing the amount of deposits will have no fiscal impact. The department is proposing to increase deposits to be paid up front with a gambling license application from $50 to $300 if the applicant is a nonprofit organization, $400 to $800 if the applicant is a sole proprietorship, and $500 to $1,000 if the application is a partnership or corporation. The law requires the department to charge a fee to cover the cost of the license investigation. Therefore, applicants are charged additional application processing fees if the cost exceeds the deposit or are refunded the difference between the cost of the investigation and deposit if the cost is less than the deposit.

These deposit amounts were set several years ago. At the time they were close approximations of the cost of an investigation. Today, that is no longer true. The department generally has to bill applicants significant additional amounts to cover the costs at the conclusion of the investigation. Collecting additional fees at the conclusion of the investigation adds time to license processing and, in many cases, is an unpleasant surprise to the applicant who assumed the deposit would be close to the actual cost.

ARM 23.16.1918. There is a fiscal impact to amending this rule to increase the hourly rate charged for testing gambling machines and machine modifications. The total amount of impact is dependent on the number of billable test hours required of the lab but estimates are the impact of the increase will be from $10,000 to $22,500. The law requires machine manufacturers to pay the cost of testing devices. There are 14 licensed video gambling machine manufacturers who submit machines and machine modifications that will be impacted. The cost has risen significantly over the last several years. The department is proposing the increase to cover the actual cost of machine testing which includes 1.5 FTE and all associated equipment and operating expenses.

By: Mike McGrath
MIKE MCGRATH, Attorney General
Department of Justice

Ali Sheppard
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State February 4, 2002.

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

In the matter of the proposed amendment of ARM 24.16.9001, 24.16.9002, 24.16.9003, 24.16.9004, 24.16.9005, 24.16.9006, and 24.16.9007, the proposed adoption of new rules I through XXXV, and the proposed repeal of ARM 24.16.9008, 24.16.9009 and 24.16.9010, all relating to prevailing wage matters	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF EXISTING RULES, THE PROPOSED ADOPTION OF NEW RULES AND THE PROPOSED REPEAL OF RULES

TO: All Concerned Persons

1. On March 8, 2002, at 10:00 a.m. a public hearing will be held in the 1st floor conference room of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment of existing rules, the adoption of new rules and the repeal of rules, all related to prevailing wage matters.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., March 1, 2002, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Attn: Mr. John Andrew, P.O. Box 6518, Helena, MT 59604-6518; telephone (406) 444-4619; TTY (406) 444-0532; fax (406) 444-7071; or e-mail joandrew@state.mt.us.

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

<u>24.16.9001 PURPOSE AND SCOPE</u> (1) These rules are adopted pursuant to 18-2-431, MCA, giving the commissioner rulemaking authority to implement the Montana Prevailing Wage law, commonly known as Montana's "Little Davis-Bacon" Act (18-2-401, et seq., MCA). The purpose of the above referenced statutes and these rules is to protect local labor markets, to maintain the general welfare of Montana workers on public works projects, to eliminate wage cutting as a method of competing for public contracts, to maintain wages and rates paid on public works at a level sufficient to attract highly skilled laborers performing quality workmanship and to prevent the rate of wages from adversely affecting the equal opportunity of Montana contractors to bid on public works.

(2) In 1931, the legislature enacted the Montana "Little Davis-Bacon" Act. The ~~act~~ <u>Act</u> requires a hiring preference for Montana workers in all contracts let for public works, a 50% preference on ~~state or federally funded~~ <u>public works</u> projects<u>,</u>

excluding projects involving the expenditure of federal aid funds or where residency preference laws are specifically prohibited by federal law, and empowers the commissioner to determine the minimum wage rates to be paid to all workers on public work contracts.

(3) ~~In 1973, the Montana legislature added the word "services" to what is now 18-2-403(1), MCA. The legislative history of this amendment suggests that the legislature was extending Montana's Little Davis-Bacon Act beyond its original parameters. See Feb. 7, 1973, minutes of the house labor and employment relations committee. As a result of this amendment, the commissioner has issued prevailing wage rates for "services" as defined in ARM 24.16.9008. For example, rates have been published covering janitorial services as well as automobile and snowmobile repair and maintenance.~~ These rules define terms used related to public works contracts for which the prevailing wage is supposed to be paid, and establishes procedures for administering prevailing wage complaints for unpaid or underpaid wages on public works contracts, calculating statutory penalties, and providing for relief in the event a party does not receive an item sent by mail.

AUTH: 18-2-409, 18-2-431 and 39-3-202, MCA
IMP: Sec. 18-2-401, 18-2-402, 18-2-411, and 39-3-201 through 39-3-216, MCA

24.16.9002 DEFINITIONS As used in ~~these rules~~ this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

(1) "Act" means 18-2-401 through 18-2-432, MCA.

(2) "Adverse decision" means a decision by the department, or a hearing officer that is not favorable to the party who wishes to have the decision reviewed.

~~(2)~~(3) "Apprentice" means a worker employed to learn a skilled trade under a written apprenticeship agreement registered with the department~~.~~ or the U.S. bureau of apprenticeship and training.

~~(3)~~(4) "Bona fide resident of Montana" is defined at 18-2-401, MCA.

~~(4)~~(5) "Commissioner" means the commissioner of labor and industry, as provided by 2-15-1701, MCA.

(6) "Certified payroll records" mean payroll records of an employer which show the rates and hours paid and any deductions therefrom, made by the employer on a public works contract job and which have been verified by or on behalf of the employer as being complete and accurate.

(7) "Complaint" means:

(a) a written complaint alleging non-payment of the standard prevailing wage on a public works contract job;

(b) a written request for an audit of an employer's payroll on a public works contract job; or

(c) a field investigation by the department of an employer's payroll on a public works contract job.

(8) "Day" means a calendar day.

~~(5)~~(9) "Department" means the department of labor and

industry, as provided by 2-15-1701, MCA.

(10) "Determination" means a decision by the department which states the amount of wages and penalty (if any) that may be owed for labor performed on a public works contract job.

~~(6)~~(11) "District" means a prevailing wage district as established under 18-2-411, MCA. ~~The commissioner has established ten (10) districts, made up of the following counties:~~

~~District 1 - Flathead, Lake, Lincoln, and Sanders;~~
~~District 2 - Mineral, Missoula, and Ravalli;~~
~~District 3 - Beaverhead, Deer Lodge, Granite, Madison, Powell, and Silver Bow;~~
~~District 4 - Blaine, Cascade, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole;~~
~~District 5 - Broadwater, Jefferson, Lewis and Clark, and Meagher;~~
~~District 6 - Gallatin, Park and Sweet Grass;~~
~~District 7 - Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, and Wheatland;~~
~~District 8 - Big Horn, Carbon, Rosebud, Stillwater, Treasure and Yellowstone;~~
~~District 9 - Daniels, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, and Valley;~~
~~District 10 - Carter, Custer, Dawson, Fallon, Prairie, Powder River and Wibaux.~~

(12) "Employ" has the same meaning as provided by 39-3-201, MCA.

(13) "Employee" has the same meaning as provided by 39-3-201, MCA, and includes any laborer, mechanic, skilled, unskilled and semiskilled laborer and apprentices employed by a contractor, subcontractor or employer and engaged in the performance of services directly upon or immediately adjacent to the job site. The term does not include material suppliers or their employees who do not perform services at the job site.

(14) "Employer" has the same meaning as provided by 39-3-201, MCA, and includes contractors and subcontractors.

(15) "Formal hearing" means a contested case, held by a department hearing officer, pursuant to Title 2, chapter 4, part 6, MCA.

(16) "Penalty" means the statutory penalty provided by 18-2-407, MCA, which is assessed by the department against the employer and which is paid to the employee in addition to the wages owed.

~~(7)~~(17) "Public contracting agency" includes:

(a) the state of Montana or any political subdivision thereof;

(b) the Montana university system;

(c) any local government or political subdivision thereof;

(d) school districts, irrigation districts, or other public authorities organized under the laws of the state of Montana; or

(e) any board, council, commission, trustees or other public body acting as or on behalf of a public agency.

~~(8) "Public contractor" means a contractor holding a valid~~

~~public contractors license issued by the Montana department of commerce as provided for in section 37-71-201, et seq., MCA, or having entered into a contract for the performance of construction, service, repair or maintenance work with the federal government or a public contracting agency.~~

~~(9) "Public works" means construction, repair and maintenance, or services performed for a public contracting agency paid for wholly or in part by the funds of any public agency.~~

(18) "Prevailing wage" or "standard prevailing rate of wages" means the standard prevailing rate of wages, as provided by 18-2-401, MCA, and as adopted by the department for work on public works contracts. The standard prevailing rate of wages determined according to these rules is not a prescribed wage rate, but is rather a minimum, at or above which an individual performing labor on a public works project must be compensated.

(19) "Redetermination" means an informal review by the department, based upon new or additional information supplied by a party who has received an adverse determination.

~~(10) "Standard prevailing rate of wages" means the standard prevailing rate of wages ad defined in 18-2-401, MCA. A standard prevailing rate of wages determined according to these rules is not a prescribed wage rate, but is rather, a minimum at or above which an individual performing labor on a public work project must be compensated.~~

(20) "Wages" have the same meaning as provided by 18-2-401, 18-2-412, and 39-3-201, MCA.

AUTH: 18-2-409, 18-2-431 and 39-3-202, MCA
IMP: Sec. 18-2-402, 18-2-403, 18-2-422, and 39-3-201 through 39-3-216, MCA

24.16.9003 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS (1) When deemed necessary, the commissioner shall establish the standard prevailing rate of wages and fringe benefits for the various occupations in each district. Except as used in (2) and (3), the term "prevailing rate of wages" includes both wages and fringe benefits.

(2) Based on survey data collected by the department for each district, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works and in private or commercial projects. Wage rates for each occupation will be set using the following procedure:

(a) If a minimum of 5,000 reported hours exists for the occupation within the district, a weighted average of the wages based on the number of hours reported will be used to calculate the district prevailing wage rate.

(b) If less than 5,000 hours for the occupation is reported, the commissioner will use collective bargaining agreement wage rates in the district for the occupation.

(c) If a collective bargaining agreement does not exist for the occupation, and a minimum of 5,000 hours are reported in the combined contiguous districts, a weighted average wage rate for the district based on hours will be computed using data

submitted from all contiguous districts. Districts and their contiguous districts are as follows:

(i) District 1 (Flathead, Lincoln, Sanders, Lake counties): districts 2, 3, 4, and 5.

(ii) District 2 (Missoula, Ravalli, and Mineral counties): districts 1 and 3.

(iii) District 3 (Granite, Powell, Deer Lodge, Silver Bow, Madison, and Beaverhead counties): districts 1, 2, 5, and 6.

(iv) District 4 (Cascade, Choteau, Toole, Liberty, Glacier, Pondera, Teton, Hill, and Blaine counties): districts 1, 5, 7, and 9.

(v) District 5 (Lewis and Clark, Broadwater, Meagher, and Jefferson counties): districts 1, 3, 4, 6, and 7.

(vi) District 6 (Gallatin, Park, and Sweet Grass counties): districts 3, 5, 7, and 8.

(vii) District 7 (Wheatland, Fergus, Musselshell, Petroleum, Golden Valley, and Judith Basin counties): districts 4, 5, 6, 8, and 9.

(viii) District 8 (Stillwater, Yellowstone, Rosebud, Treasure, Big Horn, and Carbon counties): districts 6, 7, 9, and 10.

(ix) District 9 (Valley, Phillips, Sheridan, Daniels, Garfield, McCone, Richland, and Roosevelt counties): districts 4, 7, 8, and 10.

(x) District 10 (Carter, Wibaux, Dawson, Fallon, Prairie, Custer, and Powder River counties): districts 8 and 9.

(d) If contiguous district data does not sum to a minimum of 5,000 hours, a statewide weighted average wage rate will be calculated for the occupation.

(e) If a minimum of 5,000 hours is not reported for the occupation in the entire state, then other information which the commissioner deems applicable will be used to establish the prevailing wage rate for the occupation. The commissioner shall consider:

(i) the established and special project rates of the previous year;

(ii) wage rates determined by the federal government under the Davis-Bacon Act and the Federal Service Contract Act;

(iii) wage rate information compiled on a regular basis by the department;

(iv) appropriate information from such wage surveys as may be conducted by the department; and

(v) other pertinent information.

(3) Based on survey data collected by the department of labor and industry, for each district, the commissioner will compile fringe benefit information for a given occupation by district that reflects fringe benefits actually paid to workers engaged in public works and in private or commercial projects. Fringe benefit rates for each occupation will be set for health and welfare, pension, vacation, and training using the following procedure:

(a) If a minimum of 5,000 reported hours exists for the occupation within the district, and each fringe benefit reported for a given occupation has at least 50% of the total number of

hours submitted for that occupation, a weighted average of the fringe benefits based on the number of hours reported will be used to calculate the district prevailing fringe benefit rates.

(b) If less than 5,000 hours for the occupation is reported, or a given fringe benefit for the occupation does not have at least 50% of the total number of hours submitted for that occupation, the commissioner will use existing collective bargaining agreements for the district that were effective during the survey period to determine fringe benefit rates for the occupation.

(c) If a collective bargaining agreement does not exist for the occupation, and a minimum of 5,000 hours are reported in the combined contiguous districts, hours will be totaled for contiguous district fringe benefits. Each fringe benefit must be represented by at least 50% of the total number of hours submitted in contiguous districts for that occupation for fringe benefit rates to be set. A weighted average fringe benefit rate for the district based on hours will be computed using data submitted from all contiguous districts. Districts and their contiguous districts are the same as provided by (2)(c) of this rule.

(d) If contiguous district fringe benefit data does not sum to a minimum of 5,000 hours, or does not have 50% of the total number of hours in contiguous districts submitted for that occupation, statewide weighted average fringe benefit rates will be calculated for the occupation.

(e) If a minimum of 5,000 hours is not reported for the occupation in the entire state, then other information which the commissioner deems applicable will be used to establish the prevailing fringe benefit rates for the occupation. The commissioner shall consider:

(i) the established and special project rates of the previous year;

(ii) rates determined by the federal government under the Davis-Bacon Act and the Federal Service Contract Act;

(iii) rate information compiled on a regular basis by the department;

(iv) appropriate information from such surveys as may be conducted by the department; and

(v) other pertinent information.

(4) The commissioner may request clarification, additional information or independent verification of information submitted pursuant to this rule.

(5) The commissioner will annually incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction rates. Building construction services prevailing wage rates will be updated in even-numbered years, and nonconstruction services will be updated in odd-numbered years.

(6) In the event of an incorrect prevailing wage rate being published, the commissioner will review additional data submitted to determine that the rate is incorrect. If found to be incorrect, the prevailing wage rate will revert to the last published rate that was adopted via the rulemaking and public

hearing process. For temporary rates which have not been adopted via the rulemaking and the public hearing process, an amended rate will be calculated based on information collected and submitted.

(7) It is the obligation of any person having possession or knowledge of wage rate information, including collective bargaining agreements that the commissioner should consider, or it is desired that the commissioner consider, to timely deliver such information to the commissioner.

(8) Wage information may be considered by the commissioner only if such information is delivered at the Office of the Commissioner, Department of Labor and Industry, Walt Sullivan Building, corner of Roberts and Lockey, P.O. Box 1728, Helena, Montana 59624, within the time set by the commissioner.

(9) Within each district, the commissioner considers current wage rate information on file and sets the standard prevailing rate of wages for each craft, trade, occupation, or type of workers ~~covered by the provisions of the Act~~. Except as provided in (2), all rates shall be adopted in accordance with ARM 24.16.9007.

AUTH: 18-2-409, 18-2-431 and 39-3-202, MCA
IMP: 18-2-401, 18-2-402, 18-2-403 and 18-2-411, MCA

24.16.9004 DEPARTMENT ASSISTANCE AND NEW JOB CLASSIFICATION RATES (1) Assistance in determining the nature of public works projects and whether heavy, highway or building construction prevailing wage rates apply, can be obtained through the office of the commissioner of labor and industry. Any determination or assistance provided by the commissioner's office is based solely on the facts as presented to the commissioner in the specific request for assistance.

~~(1)~~(2) If the commissioner receives a written request for a rate that does not exist for a particular craft, trade, or occupation ~~that is covered by the provisions of the Act~~, the commissioner may set an interim advisory rate that may be used by the public contracting agency or public contractor until the rate is published in accordance with ARM 24.16.9007. Such rates will not be established more frequently than once every three months.

~~(2)~~(3) At least 30 days prior to advertising for bids or letting a contract for a public works project, a public contracting agency may request that a new job classification and commensurate rate of wages and fringe benefits be established for a particular craft, classification or type of worker needed for a project. The commissioner will establish a standard prevailing rate of wages for any craft, classification or type of worker for which no rate has been previously determined.

~~(3)~~(4) A request for a new project job classification and commensurate rate of wages and benefits does not relieve a contractor from the obligation to classify and pay workers in accordance with annually established standard prevailing wage rates pending the establishment of a new job classification and wage rates.

~~(4)~~(5) A request for a new job classification and rate

of wages shall include:

(a) identification of the project by name, number or description and location;

(b) the name and address of the public contracting agency and the successful public contractor if a contract for work on the project has been awarded;

(c) the name, address and signature of the requesting party, and the name, address and signature of a requesting party's representative;

(d) each proposed job classification and rate of wages requested;

(e) a brief description of the project and the character of the work to be performed;

(f) a detailed description of the job requirements, work to be performed and skills involved in each proposed job classification;

(g) an explanation as to why none of the classifications established for the standard prevailing rate of wages is applicable;

(h) any written items of information or documents the requesting party desires to be considered;

(i) the names and addresses of all parties entitled to notice and a signed and dated certificate showing that a copy of the request was mailed to each.

~~(5)~~(6) A request for a new job classification and rate of wages must establish:

(a) that the project is of such an unusual character that its performance requires unique skills not traditionally performed by any craft classification or type of worker for which there has been established a standard prevailing rate of wages;

(b) that there exists a classification of workers who commonly perform work involving such unique skills at the proposed rate of wages.

AUTH: 18-2-409, 18-2-431 and 39-3-202, MCA
IMP: 18-2-402 and 18-2-422, MCA

24.16.9005 OBLIGATIONS OF PUBLIC CONTRACTING AGENCIES

(1) A public contracting agency must include in the bid specifications and contracts for any public works the following:

(a) An unequivocal agreement by the contractor to give preference to employment of bona fide Montana residents in compliance with 18-2-403(1), MCA. For any ~~state~~ construction project, excluding projects involving the expenditure of federal aid funds or where residency preference laws are specifically prohibited by federal law, ~~except where specifically prohibited by federal law~~ the bid specifications and the contract shall provide that at least 50% of the ~~workers (including workers employed by subcontractors)~~ man hours worked (labor performed) on the project will be performed by bona fide Montana residents in compliance with 18-2-403(1) and 18-2-409, MCA. In the case of a particular contractor such percentage of Montana residents shall be modified to comply with any written directive by the commissioner specifying a different percentage.

(b) An unequivocal agreement by the contractor that a worker (including workers employed by a subcontractor) performing labor on the project will be paid the applicable standard prevailing rate of wages as determined by the commissioner.

(c) A listing of standard prevailing wage rates including fringe benefits determined by the commissioner applicable ~~at the project sites~~ to the public works contract ~~and language in the contractor's agreement incorporating the same by reference or otherwise~~.

(d) The contract provisions must clearly show that the contractor and its subcontractors are bound to pay wages at rates determined by the commissioner, and to give required preferences.

(2) If a contract for public works is to be performed in more than one district where a different standard prevailing rate of wages is established for a particular craft, classification or type of worker, the highest rate is the rate to be included in the bid specifications and contract provision.

~~(3) Whenever a public works project, where the public contractor is required to be licensed pursuant to 37-71-201, et seq., MCA, is accepted by a public contracting agency, the agency shall promptly send to the department a notice of acceptance and the completion date of the project. This notice is required only if the public works project is covered by the Act.~~

~~(4)~~(3) If a public contracting agency fails to comply with the requirements of this rule, the obligation to pay the standard prevailing rate of wages will be placed on the public contracting agency and the ~~public~~ contractor may be relieved of such obligation.

AUTH: 18-2-409 and 18-2-431, MCA
IMP: 18-2-403, 18-2-421 and 18-2-422, MCA

24.16.9006 OBLIGATIONS OF PUBLIC EMPLOYERS, CONTRACTORS AND SUBCONTRACTORS (1) All ~~public~~ contractors and subcontractors shall give preference in hiring to bona fide Montana residents in the performance of public works contracts ~~for public works~~.

(a) In the performance of a public works contract for a ~~state~~ construction project, a ~~public~~ contractor, subcontractor or employer shall ensure that at least 50% of all ~~workers performing labor~~ man hours worked (labor performed) ~~under the contract for public works~~ on the project is performed by ~~are~~ bona fide Montana residents.

(b) For cause as provided in 18-2-409, MCA, a contractor, subcontractor or employer may in writing request that the commissioner modify percentage residency requirements on a particular ~~state~~ project. In requesting the variance, the contractor, subcontractor or employer must document in writing any and all measures taken in assessing the availability of bona fide Montana employees including, but not limited to, contacting local job service offices, newspaper advertising, and contacting local union halls, temporary or personnel agencies. The

commissioner may modify or waive residency requirements under the provision of the statute and shall by written directive notify the contracting agency of any such modification or waiver.

(2) All ~~public~~ contractors~~,~~ ~~and its~~ subcontractors and employers shall classify each ~~worker~~ employee who performs labor on a public works project according to the applicable standard prevailing rate of wages for such craft, classification or type of ~~worker~~ employee established by the commissioner, and shall pay each such ~~worker~~ employee a rate of wages not less than the standard prevailing rate.

~~(3) A public contractor or subcontractor shall require its subcontractors to comply with the law for contractor's bonds for wages and benefits prescribed by 39-3-701, et seq., MCA unless excepted under 39-3-704, MCA. A contractor is jointly and separately responsible for its subcontractor's failure to comply with classification and wage payment provisions of state law and department rules, including penalties assessed thereon.~~

~~(4) Public contractors and subcontractors shall keep clear and legible records for each employee who performs labor on a public works project showing:~~

~~(a) the place where the employee was contacted for hiring;~~

~~(b) whether or not the employee is a bona fide Montana resident;~~

~~(c) the craft, classification or type of work performed by the employee in conformity with the applicable standard prevailing rate of wages;~~

~~(d) the date, the time worked, on an hourly basis, and the identification of the project for each day the employee performed work on a public works project;~~

~~(e) the hourly rate of wages, including fringe benefits for health, welfare, pension contributions, travel allowance and other terms by which the employee was compensated for such work.~~

~~(5) Public contractors and subcontractors must properly classify workers in accordance with the craft or trade to be performed. For example, an electrician or plumber may not be classified as a laborer in order to pay a lower prevailing rate of wages.~~

AUTH: 18-2-409 and 18-2-431, MCA
IMP: 18-2-403, MCA

24.16.9007 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) The commissioner's determination of minimum wage rates, including fringe benefits for health and welfare, pension contributions and travel allowance, by craft, classification or type of worker, and by character of project, are adopted in accordance with the Montana Administrative Procedure Act and rules implementing ~~the Act~~ such act.

(a) A notice of proposed adoption of the commissioner's determination is published in the Montana Administrative Register 30 to 45 days prior to adoption according to regular publication dates scheduled in ARM 1.2.419.

(b) Adopted wage rates are effective until superseded and replaced by a subsequent adoption.

(c) The wage rates applicable to a particular public works project are those in effect at the time the bid specifications are advertised.

(d) The wage rates proposed and the wage rates adopted are incorporated by reference in respective notices published in the Montana Administrative Register.

(e) The current building construction services rates are contained in the 2000 version of "The State of Montana Prevailing Wage Rates - Building Construction Services" publication.

(f) The current non-construction services rates are contained in the 1997 version of "The State of Montana Prevailing Wage Rates - Service Occupations" publication.

(g) The current heavy and highway construction services rates are contained in the 2000 version of "The State of Montana Prevailing Wage Rates - Heavy and Highway Construction Services" publication.

(2) The commissioner maintains a mailing list of interested persons and agencies. A copy of any notice, proposed rate of wages, adopted rates, wages or other information are distributed to each addressee. All others may obtain a copy or be included on the mailing list upon request to the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, 1805 Prospect Avenue, P.O. Box 1728, Helena, MT 59624-1728. Copies of adopted wage rates are available at reproduction cost for a period of five years following their effective date.

(3) The standard prevailing rates of wages are hereby adopted and incorporated by reference. Copies of the rates are available upon request from the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, 1805 Prospect Avenue, P.O. Box 1728, Helena, MT 59624-1728, (406) 444-5600.

AUTH: 18-2-409, 18-2-431 and 39-3-202, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, and 18-2-412, MCA

REASON: There is reasonable necessity to amend ARM 24.16.9001, 24.16.9002, 24.16.9003, 24.16.9004, 24.16.9005, 24.16.9006, and 24.16.9007 in order to conform the prevailing wage rules with federal regulations and changes in state legislation.

4. The Department proposes to adopt new rules as follows:

NEW RULE I OBLIGATIONS OF PARTIES REGARDING THE PAYMENT OF PREVAILING WAGES (1) Montana law requires payment of the standard prevailing rate of wages on public works contracts. Public contracting agencies, contractors, and subcontractors and employers each have a role in complying with the prevailing wage laws.

(2) Assistance in determining the nature of public works projects and whether heavy, highway or building construction prevailing wage rates apply, can be obtained through the office of the commissioner of labor and industry. Any determination or assistance provided by the commissioner's office is based solely

on the facts as presented to the commissioner in the specific request for assistance.

(3) Pursuant to 18-2-422, MCA, a public contracting agency is obligated to include in its bid specifications and public works contracts a provision that the contractors, subcontractors and employers must pay the standard prevailing rate of wages in the performance of the public works contract, and specify what those rates are. As provided in 18-2-403, MCA, the failure of the public contracting agency to include such provisions subjects the public contracting agency to liability for any underpaid wages owed by any contractor, subcontractor or employer for the performance of the public works contract.

(4) Pursuant to 18-2-403, MCA, if the public contracting agency includes the required provisions regarding payment of the standard prevailing rate of wages, the contractor, subcontractor or employer that signs the contract with the public contracting agency is obligated to ensure that the appropriate standard prevailing rate of wages is paid to each employee performing construction services in performance of the public works contract, and is liable for any underpaid wages or fringe benefits.

(5) As provided in 18-2-406, MCA, each contractor, subcontractor or employer must post the wage scale to be paid for work done in performance of the public works contract in a prominent and accessible site on the project or work area from the first day of work and continued for the duration of the project. Failure to pay at least the standard prevailing rate of wages subjects each contractor, subcontractor or employer to penalties and fees as provided by law.

(6) In order to ensure compliance with Montana's prevailing wage laws, public contracting agencies, contractors, subcontractors and employers may enter into contractual agreements that specify that each contractor, subcontractor or employer working on the public works contract has an obligation to ensure that any person, firm or entity performing any portion of the public works contract for which the contractor, subcontractor or employer is responsible, is paid the applicable standard prevailing rate of wages. The terms of the contract may include a provision for the indemnification of a party that is required to pay underpaid wages on behalf of any other person, firm or entity that failed to properly pay the required prevailing wage.

(7) The failure of a contractor, subcontractor or employer to comply with the provisions of 18-2-412, MCA, regarding the acceptable alternative methods of paying the standard prevailing rate of wages, may subject that party to penalties as provided by law and damages or obligations as specified by contract.

AUTH: 18-2-431, MCA
IMP: 18-2-403, 18-2-406, 18-2-407, 18-2-412 and 18-2-422, MCA

NEW RULE II PREVAILING WAGE DISTRICTS ESTABLISHED

(1) Pursuant to 18-2-411, MCA, the commissioner has established 10 districts for the purpose of setting the standard prevailing rate of wages for construction services (other than

heavy construction or highway construction) and non-construction services. Heavy construction and highway construction rates are set on a state-wide basis, as provided by 18-2-411, MCA.

(2) The districts are composed of the following counties:

(a) District 1: Flathead, Lake, Lincoln, and Sanders;

(b) District 2: Mineral, Missoula, and Ravalli;

(c) District 3: Beaverhead, Deer Lodge, Granite, Madison, Powell, and Silver Bow;

(d) District 4: Blaine, Cascade, Choteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole;

(e) District 5: Broadwater, Jefferson, Lewis and Clark, and Meagher;

(f) District 6: Gallatin, Park, and Sweet Grass;

(g) District 7: Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, and Wheatland;

(h) District 8: Big Horn, Carbon, Rosebud, Stillwater, Treasure, and Yellowstone;

(i) District 9: Daniels, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, and Valley;

(j) District 10: Carter, Custer, Dawson, Fallon, Prairie, Powder River, and Wibaux.

AUTH: 18-2-431, MCA
IMP: 18-2-411, MCA

NEW RULE III PUBLIC WORKS CONTRACTS FOR CONSTRUCTION SERVICES SUBJECT TO PREVAILING RATES (1) Public works contracts for construction services where the total contract price is more than $25,000 are subject to standard prevailing wage requirements, and include building construction, heavy construction, and highway construction.

(2) Building construction projects generally are the constructions of sheltered enclosures with walk-in access for housing persons, machinery, equipment, or supplies. It includes all construction of such structures, incidental installation of utilities and equipment, both above and below grade level, as well as incidental grading, utilities and paving.

(a) Examples of building construction include, but are not limited to, alterations and additions to buildings, apartment buildings (5 stories and above), arenas (closed), auditoriums, automobile parking garages, banks and financial buildings, barracks, churches, city halls, civic centers, commercial buildings, court houses, detention facilities, dormitories, farm buildings, fire stations, hospitals, hotels, industrial buildings, institutional buildings, libraries, mausoleums, motels, museums, nursing and convalescent facilities, office buildings, out-patient clinics, passenger and freight terminal buildings, police stations, post offices, power plants, prefabricated buildings, remodeling buildings, renovating buildings, repairing buildings, restaurants, schools, service stations, shopping centers, stores, subway stations, theaters, warehouses, water and sewage treatment plants (buildings only), etc.

(b) Projects involving the construction, alteration, or repair of single family individual dwelling units, houses, or

apartment buildings of not more than four stories in height and consisting of not more than eight living units, are not subject to the prevailing wage rates.

(3) Highway construction projects include, but are not limited to, the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, and parking areas, bridges constructed or repaired in conjunction with highway work, and other similar projects not incidental to building construction or heavy construction.

(a) Highway construction projects include, but are not limited to, alleys, base courses, bituminous treatments, bridle paths, concrete pavement, curbs, excavation and embankment (for road construction), fencing (highway), grade crossing elimination (overpasses or underpasses), guard rails on highways, highway signs, highway bridges (overpasses, underpasses, grade separation), medians, parking lots, parkways, resurfacing streets and highways, roadbeds, roadways, runways, shoulders, stabilizing courses, storm sewers incidental to road construction, street paving, surface courses, taxiways, and trails.

(4) Heavy construction projects include, but are not limited to, those projects that are not properly classified as either "building construction", or "highway construction."

(a) Heavy construction projects include, but are not limited to, antenna towers, bridges (major bridges designed for commercial navigation), breakwaters, caissons (other than building or highway), canals, channels, channel cut-offs, chemical complexes or facilities (other than buildings), cofferdams, coke ovens, dams, demolition (not incidental to construction), dikes, docks, drainage projects, dredging projects, electrification projects (outdoor), fish hatcheries, flood control projects, industrial incinerators (other than building), irrigation projects, jetties, kilns, land drainage (not incidental to other construction), land leveling (not incidental to other construction), land reclamation, levees, locks and waterways, oil refineries (other than buildings), pipe lines, ponds, pumping stations (prefabricated drop-in units-not buildings), railroad construction, reservoirs, revetments, sewage collection and disposal lines, sewers (sanitary, storm, etc.), shoreline maintenance, ski tows, storage tanks, swimming pools (outdoor), subways (other than buildings), tipples, tunnels, unsheltered piers and wharves, viaducts (other than highway), water mains, waterway construction, water supply lines (not incidental to building), water and sewage treatment plants (other than buildings) and wells.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402 and 18-2-403, MCA

NEW RULE IV COMMERCIAL SUPPLIER DEFINED (1) As used in this chapter, the term "commercial supplier" means a person, firm or entity that regularly furnishes goods and supplies to the public or to a particular sector or industry. The term includes both retail and wholesale operations, but does not include a person, firm or entity that limits its sales or

production output from any single source or place of operation for use solely in the performance of public works contracts.

(2) As used in this rule, the term "goods and supplies" means tangible items, materials or commodities that are produced or manufactured for use or incorporation in construction projects. The term includes both items that are produced or manufactured to a standard size, grade or dimension, as well as items that are specially manufactured or produced on a "to order" or "made to measure" basis.

AUTH: 18-2-431, MCA
IMP: 18-2-401, MCA

NEW RULE V COMMERCIAL SUPPLIERS NOT SUBJECT TO PREVAILING WAGE LAWS (1) A commercial supplier of goods and supplies is not subject to Montana's prevailing wage laws unless that supplier acts as a construction contractor, subcontractor or employer on the public works contract by performing on-site labor.

(2) Employees of a commercial supplier who are engaged in the performance of services directly upon the job site must be paid the applicable prevailing wage rate for the classification of work performed.

(3) For the purposes of this rule, the term "construction work" means labor that is performed after the commercial supplier delivers the goods or supplies. The fact that a commercial supplier charges for delivery (based on distance from the commercial supplier's location to the job site) does not transform the delivery into "construction work".

(a) As an example, the dumping of gravel from a belly-dump trailer, even if the dumping is done in a long row, is considered to be part of the delivery of the gravel. However, if the driver of the delivery vehicle performs "shovel work" after the load is dumped, that "shovel work" is considered to be "construction work".

(b) As another example, ready-mixed concrete is delivered by a commercial supplier from the mixer truck to a particular location on the job site. The mixer truck operator is delivering the concrete when the operator directs the flow of concrete down the delivery chute that is attached to the mixer truck, even if that flow is directed into a form that has been assembled by others in place. Further movement or manipulation of the concrete, after it leaves the end of the delivery chute, such as distributing the concrete evenly in the form with a shovel or screeding the concrete, constitutes "construction work".

(c) As another example, a commercial supplier delivers road oil to a public works contract site in a tank truck. The transfer of the road oil from the tank truck to a storage tank or into a road oiler truck is considered to be delivery within the meaning of this rule. However, if the supplier's tank truck also sprays the road oil directly on the road surface, that spraying operation is considered to be "construction work" for which the prevailing rate of wages must be paid.

(d) As another example, a commercial supplier of cabinets

is not engaging in "construction work" by delivering the cabinets to a particular location or locations in a building that is being constructed pursuant to a public works contract. However, any installation work done to attach the cabinets to the building, or work performed after the cabinets are attached to the building, constitutes "construction work" within the meaning of this rule.
AUTH: 18-2-431, MCA
IMP: 18-2-401, MCA

NEW RULE VI CLASSIFYING EMPLOYEES FOR CONSTRUCTION SERVICES (1) All employers on public works contracts for construction services (including contractors and subcontractors) shall classify each employee who performs labor on a public works contract project according to the applicable standard prevailing rate of wages for such craft, classification or type of employee established by the commissioner, and shall pay each employee a rate of wages not less than the standard prevailing rate. In instances where an employee performs duties and tasks associated with other crafts for 30 minutes or less per day, the employee would still receive the appropriate rate of wages established for the employee's primary craft classification.
AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402 and 18-2-403, MCA

NEW RULE VII PROJECTS OF A MIXED NATURE (1) Prevailing wage projects will use either the heavy, highway, or building construction prevailing wage rates. In certain cases, multiple wage schedules should be included in the bid document.

(2) A guideline referred to as the "20% test" can generally be followed to determine when the heavy, highway, or building construction prevailing wage rates should be used for construction contracts.

(a) This guideline is applied when, for example, a project is principally a contract for heavy or highway construction, but building construction is a "significant component" of the project (where the budget for building construction exceeds 20% of the total anticipated construction contract amount). The project engineer should then include both the heavy or highway construction rates and building construction rates in the bid document.

(b) The same "20% test" concept would apply to a project which is principally a contract for building construction, but also includes more than 20% of the contract price for non-building construction activity. In such cases, the contract should include both the building construction rates and heavy or highway construction prevailing wage rates in the bid document.

(c) In a project of a mixed nature where the 20% guideline applies, a contractor may pay the higher of the rates (on a craft-by-craft basis) for all work performed under the contract. However, in a project of a mixed nature, the contractor is not required to pay at a rate higher than is applicable for the craft for the type of work being performed.

(4) Only one schedule of rates (either building

construction, heavy construction or highway construction) is issued if a particular type of construction activity is merely "incidental" in comparison to the overall character of the entire project. For the purpose of this rule, "incidental" means that the work in question either constitutes less than 20% of the total contract price, or the work in question costs less than $1,000,000.
AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402 and 18-2-403, MCA

NEW RULE VIII DIVIDING PROJECTS PROHIBITED (1) Public contracting agencies shall not divide a public works project into more than one contract for the purpose of avoiding compliance.

(2) When making a determination of whether the public agency divided a contract to avoid compliance, the commissioner shall consider the facts and circumstances in any given situation including, but not limited to, the following matters:

(a) the physical separation of project structures;

(b) whether a single public works project includes several types of improvements or structures;

(c) the anticipated outcome of the particular improvements or structures the agency plans to fund;

(d) whether the structures or improvements are similar to one another and combine to form a single, logical entity having one overall purpose or function;

(e) whether the work on the project is performed in one time period or in several phases as components of a larger entity;

(f) whether a contractor, subcontractor or employer and their employees are the same or substantially the same throughout the particular project;

(g) the manner in which the public contracting agency and the contractors, subcontractors or employers administer and implement the project; and

(h) other relevant matters as may arise in any particular case.

(3) When the commissioner determines that a public contracting agency has divided a public works project to avoid compliance, the commissioner shall issue an order compelling compliance. The order shall be written and shall offer the public contracting agency the opportunity to contest the order.
AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402 and 18-2-403, MCA

NEW RULE IX CLASSIFYING EMPLOYEES FOR NON-CONSTRUCTION SERVICES (1) All employers on public works contracts for non-construction services (including contractors and subcontractors) shall classify each employee who performs labor on a public works contract project according to the applicable standard prevailing rate of wages for such craft, classification or type of employee established by the commissioner, and shall pay each such employee a rate of wages not less than the standard prevailing rate.

(2) The prohibition against dividing projects so as to avoid payment of the prevailing wages, as provided in [NEW RULE VIII], is also applicable to public works contracts involving non-construction services.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402 and 18-2-403, MCA

NEW RULE X "SITE OF WORK" FOR NON-CONSTRUCTION SERVICES

(1) Unlike construction services, which by their very nature are performed at a specific site of work, many non-construction services can be performed at the place of business of the public contracting agency or at the place of the contractor. The fact that non-construction services are rendered at locations away from the place of business of the governmental entity does not change the requirement that the prevailing wage must be paid under the contract.

(2) As an example, school hot lunches under a food service contract could be prepared at the kitchen of a school where the food is being served, or the food could be prepared at the caterer's own kitchen and transported to the school. Regardless of where the food is being prepared, however, the employees must be paid the prevailing wage.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402 and 18-2-403, MCA

NEW RULE XI REQUIRED RECORDS (1) All contractors, subcontractors or employers performing work on public works contracts shall make and maintain for a period of three years from the completion of work upon such public works projects, records necessary to determine whether the prevailing rate of wage and overtime has been or is being paid to employees upon public works projects.

(2) In addition to the certification required by [NEW RULE XIII], records necessary to determine whether the prevailing wage rate and overtime wages have been or are being paid must include, but are not limited to, records of:

(a) the name, address, and social security number of each employee;

(b) the work classification or craft of each employee;

(c) the rate or rates of monetary wages and fringe benefits paid to each employee, including:

(i) the amount of payment (if any) for travel expenses;

(ii) the amount of payment (if any) for per diem expenses;

(iii) the amount of payment (if any) for other reimbursed expenses; and

(iv) the fair market value of any other benefits provided to the employee by the employer, such as allowing personal use of a company vehicle by the employee and the value of meals and lodging directly furnished by the employer;

(d) the rate or rates of fringe benefits payments made in lieu of those required to be provided to each employee;

(e) total daily and weekly compensation paid to each employee;

(f) the daily and weekly hours worked by each employee,

specified by actual calendar date; and if the employee worked in more than one craft or classification for which different rates were payable, the records shall show the number of hours in each day worked at the different crafts or classifications;

(g) apprenticeship and training agreements and standards;

(h) any deduction, rebates or refunds taken from each employee's total compensation and actual wages paid; and

(i) any payroll and other records pertaining to the employment of employees on a public works project.

(3) When apprentices are employed on a public works project, the records must clearly distinguish them from other employees. The records must also clearly identify the date each apprentice started working on the public works project and must include verification of apprenticeship registration.

(4) When a contractor, subcontractor or employer employs an employee on public works projects and non-public works projects during the same work week and the employee is paid a rate of pay which is less than the prevailing wage rate when working on a non-public works project, the employer must separately record the hours worked on the public works contract projects and those hours worked elsewhere.

AUTH: 18-2-431, MCA
IMP: 18-2-422 and 18-2-423, MCA

NEW RULE XII RECORDS AVAILABILITY (1) Every employer (including a contractor or subcontractor) performing work on a public works project shall make available to the department records necessary to determine if the prevailing wage rate has been or is being paid to employees on the public works project. Such records shall be made available for inspection and transcription within 24 hours of an on-site inspection, within five days of a mail-in request or at such later time as may be specified by the department.

AUTH: 18-2-431, MCA
IMP: 18-2-422 and 18-2-423, MCA

NEW RULE XIII PAYROLL CERTIFICATION (1) When a prevailing wage complaint has been filed with the department or when the department has otherwise received evidence indicating that a violation has occurred, or when the department undertakes an audit, the department shall send a letter requesting copies of the contractor, subcontractor or employer's payroll records. The records requested will include those enumerated in [NEW RULE XI], and shall be forwarded to the department within five days. Included with the records must be a statement with respect to the wages paid each employee. This statement shall be executed by the contractor, subcontractor, employer or by an authorized officer or employee of the contractor, subcontractor or employer who supervises the payment of wages, and shall certify the payroll records, or copies thereof, are true and accurate and reflect all payments and deductions made for employees employed on the public works project for each week.

AUTH: 18-2-431, MCA
IMP: 18-2-422 and 18-2-423, MCA

NEW RULE XIV FULL PAYMENT REQUIRED (1) Each contractor, subcontractor or employer shall pay each employee not less than the prevailing wage rate required unconditionally, without subsequent rebate, and except as provided in (2), without deductions for:

(a) meals;

(b) lodging;

(c) transportation; or

(d) use of small tools.

(2) A contractor, subcontractor or employer may make deductions if such deductions are in a form prescribed by the commissioner and consistent with federal WH-347 payroll form available at www.dol.gov and are either:

(a) required by law;

(b) required or allowed by a collective bargaining agreement between a bona fide labor organization and the contractor, subcontractor or employer; or

(c) expressed in a written or oral agreement carried out in practice or in fact and mutually understood between an employee and an employer and undertaken at the beginning of employment. Such an agreement must concern the fair market value of other benefits provided to the employee by the employer such as meals and lodging directly furnished by the employer, employee use of company vehicles, or other similar items not regularly or customarily provided.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-412 and 18-2-423, MCA

NEW RULE XV WAGE AVERAGING PROHIBITED (1) A contractor, subcontractor or employer may not reduce an employee's regular rate of pay for work on projects not subject to the prevailing wage rate laws when the reduction in pay has the effect of the employee not receiving the prevailing rate of wage for work performed on the public works project.

(2) As used in this rule, "regular rate" has the same meaning as that defined in ARM 24.16.2512.

(3) When making a determination of whether a contractor, subcontractor or employer has reduced an employee's regular rate in violation of (1) of this rule, the department shall consider:

(a) the timing of the wage rate reduction;

(b) whether the wage rate reduction was made pursuant to an established plan;

(c) whether the wage rate reduction is applied equally to all employees in similar job classifications;

(d) whether the wage rate reductions are applied to employees employed on public works projects, but not to employees employed only on projects not subject to the prevailing wage rate laws; and

(e) other considerations as the facts and circumstances of a particular matter may reveal.

AUTH: 18-2-431, MCA
IMP: 18-2-412, MCA

NEW RULE XVI PAYMENT OF FRINGE BENEFITS (1) All contractors, subcontractors and employers that are required to pay employees the prevailing rate of wages must pay no less than the hourly rate of pay and fringe benefits as determined by the commissioner.

(2) Apprentices must be paid the percentage of the basic hourly rate required, based on the total time in the craft, and/or fringe benefits specified in the employers' registered apprenticeship standards. If the apprentice performs labor which is subject to a higher wage rate either by contract or by law than that specified in the apprenticeship standards, the higher wage rate shall be paid by the contractor, subcontractor or employer. If the standards are silent on the payment of fringes, the apprentice is to receive the full amount of the fringe benefits stipulated on the wage decision.

(3) The provisions of this rule are met when the amount of the fringe benefit or benefits is paid to the employee, in cash, or irrevocable contributions are made to a trustee or a third party administering a fringe benefit or benefits program.

(4) When a contractor, subcontractor or employer pays an hourly rate of pay which exceeds that determined by the commissioner, the amount by which the rate is exceeded may be credited toward payment of the amount of fringe benefits determined by the commissioner for the trade or occupation.

(5) When a contractor, subcontractor or employer pays a rate for any one fringe benefit which exceeds that which is determined for the fringe benefit, the amount by which the rate is exceeded may be credited toward payment of the amount to be paid for all fringe benefits as determined by the commissioner for the trade or occupation.

(6) When a contractor, subcontractor or employer pays an amount for fringe benefits which exceeds the amount of fringe benefits established by the commissioner, the excess amount may be credited towards the hourly rate of pay. In order for the credit to apply, the contractor, subcontractor or employer must have the amount paid for fringe benefits separately identified as required by [NEW RULE XI(2)].

(7) Contributions to fringe benefit plans must be made not less than quarterly.

AUTH: 18-2-431, MCA
IMP: 18-2-412, MCA

NEW RULE XVII OVERTIME WAGES COMPUTATIONS (1) Where an employee performs work in one or more classifications which provide for one or more hourly rates of pay, the employee must be paid, in addition to the straight time hourly earnings for all hours worked, a sum determined by multiplying one half the weighted average of the hourly rates by the number of hours worked in excess of 40 per week.

(2) Fringe benefits must be paid for all hours worked, including the overtime hours. When determining the hourly wage rate for overtime purposes, the amount paid for fringe benefits shall be excluded from the computations when determining the overtime rate. For example, an employee who earns $15 per hour

plus $3 per hour in fringe benefits and works 42 hours in a week is entitled to $600 ($15/hr x 40 hours) + $45 ($22.50/hr x 2 hours) + $126 ($3/hr x 42 hours) = $771 for that week.
AUTH: 18-2-431 and 39-3-403, MCA
IMP: 18-2-412 and 39-3-405, MCA

NEW RULE XVIII APPRENTICES (1) Apprentices are those persons employed and individually registered in bona fide apprenticeship programs registered with or recognized by the department's bureau of apprenticeship and training or the U.S. bureau of apprenticeship and training.

(2) An employer is limited in the number of apprentices permitted on the job site for any class or type of employee based on the allowable ratio of apprentices to journeymen specified in the approved program. This requirement applies to the work site unless otherwise stated.

(3) An apprentice must register 30 days prior to the date the apprentice starts work on the project. An apprenticeship ratio is determined on a daily basis for each work week, based on the number of journeymen employed on site. Any employee who is not registered or otherwise employed as stated in this rule, shall be paid not less than the applicable wage rate on the wage determination for the class or type or work actually performed. If an employer exceeds or has exceeded the allowable ratio of apprentices to journey-level workers, the apprentice(s) who has the earliest starting date on the public works project is the apprentice who may be paid the percentage of pay specified in the apprenticeship agreement. If the records kept by the employer do not identify which apprentice started on which date, in the event the ratio is exceeded on any given day, all of the employer's apprentices working on the public works project must be paid the prevailing wage for that work week. In the event the Montana apprenticeship and training registration agency or the U.S. bureau of apprenticeship and training withdraws approval of an apprenticeship program, or deems the program to be out of compliance, the contractor, subcontractor or employer shall no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the class or type of work performed until determined in compliance or an acceptable program is approved.
AUTH: 18-2-431 and 39-6-101, MCA
IMP: 18-2-412 and 39-6-106, MCA

NEW RULE XIX FILING COMPLAINTS (1) Complaints may be filed whenever an employee allegedly has not received the prevailing wages and/or fringe benefits due. These wages can be, but are not limited to, health and welfare, pension, vacation, overtime, or regular wages.

(2) A complaint may be filed by:

(a) the employee;

(b) the estate of an employee;

(c) an authorized representative of the commissioner, on behalf of an employee or group of employees;

(d) an authorized representative of an employee, such as a

union business agent; or

(e) other persons or entities who can demonstrate that they have a direct pecuniary interest in seeing that wages are properly paid on public works contracts. Such other persons or entities include, but are not limited to, competitors of the employer that unsuccessfully bid on the public works contract.

(3) A complaint must be reduced to writing on the form furnished by the commissioner or in a format acceptable to the commissioner and signed by the complaining party.

(4) Wage complaint forms can be obtained from the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, 1805 Prospect Avenue, P.O. Box 6518, Helena, MT 59624-6518. The telephone number is 406-444-5600.

(a) When requested by mail or telephone, the wage complaint form is mailed to the claimant by the department with a letter of instruction. The claim complaint must be filled out in detail, signed by the claimant and notarized. The form then must be returned to the labor standards bureau.

(5) Field investigations may be commenced by the commissioner without a complaint having been filed.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-201, 39-3-207, 39-3-209, 39-3-210 and 39-3-211, MCA

NEW RULE XX JURISDICTIONAL REVIEW (1) Upon receipt by the department of a complaint, the complaint is reviewed to decide jurisdictional coverage.

(a) If it appears the work is subject to federal prevailing wage laws, the complainant is advised to contact the U.S. department of labor.

(b) If it appears that state prevailing wage laws apply and not more than three years have elapsed since the alleged occurrence of improper payment, the process is continued.

(2) Information is obtained to decide if the job is exempt from prevailing wage requirements. If the job is exempt, the complainant is notified and the file is closed. If the job is not exempt, the complaint process is continued.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-201, 39-3-207, 39-3-209, 39-3-210 and 39-3-211, MCA

NEW RULE XXI REQUESTING PARTY'S FAILURE TO PROVIDE INFORMATION (1) If the party requesting the investigation fails to provide information requested by the department within time frames specified by the department, the department may dismiss the complaint.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-201, 39-3-209, 39-3-210 and 39-3-211, MCA

NEW RULE XXII EMPLOYER RESPONSE TO COMPLAINT (1) A complaint is commenced when a letter is mailed to the employer, contractor or subcontractor by the department notifying the employer, contractor or subcontractor of the complaint and

requesting certified payroll records.

(2) A copy of the letter is sent to all parties involved in the complaint:

(a) the employee(s), if a wage complaint was filed;

(b) the prime contractor, if the complaint was filed against a subcontractor;

(c) the contracting agencies and their agent, if identified; and

(d) the architect(s) or engineer(s) who prepared the bid specifications for the contracting agency.

(3) An employer must file a written response to the complaint. The response must be on either the form provided by the department or presented in a similar format.

(4) To be timely, the employer's written response must be postmarked or delivered to the department by the date specified by the department. Upon timely request and for good cause shown, the department may allow additional time for response.

(5) Failure of the employer to timely respond to the complaint will result in the entry of a determination adverse to the employer.

AUTH: 18-2-423, 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-201, 39-3-209, 39-3-210 and 39-3-211, MCA

NEW RULE XXIII DEPARTMENT REVIEW OF EMPLOYER RECORDS

(1) If the employer complies and submits the requested records, they are examined to determine if a violation has occurred. The records are reviewed in accordance with [NEW RULE XI].

(2) In addition, the records are reviewed to determine if the employer has a fringe benefit fund, plan, or program and whether the fund, plan, or program meets the requirements of the Employee Retirement Income Security Act of 1974 or that such fund, plan, or program is approved by the U.S. department of labor.

(3) In addition, the records are reviewed to determine whether the employer has contributed with the trust fund or private insurance company the benefits being claimed.

(4) If an inspection of the records reveals no violation, a letter is sent to the employer advising that the records are in order, no violations have been found and the file is closed. A copy of the letter is sent to all parties involved.

(5) If an inspection of the information submitted by the employer reveals a violation, the investigation is continued.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 18-2-424, 39-3-201 through 39-3-216 , MCA

NEW RULE XXIV DETERMINATION (1) Following the expiration of the period for an employer to respond to a complaint, the department will make a written determination of the wages and penalty owed, if any.

(2) A copy of the written determination will be mailed to each party involved with the complaint and attorneys of record

at their last known address.

(3) A party who receives an adverse decision may request either a redetermination or a formal hearing. The request must be in writing and specify whether a redetermination or a hearing is requested.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, and 39-3-201 through 39-3-216, MCA

NEW RULE XXV CRITERIA TO DETERMINE PENALTY AND COST IMPOSITION (1) The commissioner shall consider the following mitigating and aggravating circumstances when determining the amount of any civil penalty to be assessed against a contractor, subcontractor, or employer found in violation of the terms of the public works contract and shall cite the circumstances the commissioner finds to be applicable:

(a) the actions of the contractor, subcontractor, or employer in response to previous violations, if any, of statutes and rules;

(b) prior violations, if any, of statutes and rules;

(c) the opportunity and degree of difficulty to comply;

(d) the magnitude and seriousness of the violation, including instances of aggravated or willful violation, or gross negligence; or

(e) whether the contractor, subcontractor, or employer knew or should have known of the violation.

(2) It shall be the responsibility of the contractor, subcontractor, or employer to provide the commissioner with evidence of any mitigating circumstances set out in (1) of this rule.

(3) In arriving at the actual amount of the penalty and costs, the commissioner shall consider the amount of the underpayment of wages, if any, in violation of any statute or rule.

(4) Notwithstanding any other section of this rule, the commissioner shall consider all mitigating circumstances presented by the contractor, subcontractor, or employer for the purpose of reducing the amount of the civil penalty to be assessed.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 18-2-432, and 39-3-207, MCA

NEW RULE XXVI REQUEST FOR REDETERMINATION (1) A party who has received an adverse decision may request a redetermination.

(2) The request for a redetermination must be made within 15 days of the date the determination is mailed. The request for a redetermination must be in writing and must include new or additional information relevant to the issue(s) in dispute which the department is to consider.

(3) After receiving a timely request for a redetermination which includes new or additional information, the department will issue a written redetermination and mail a copy to the parties.

(4) The department will only issue one redetermination for each party who has received an adverse decision.

(5) If a request for a redetermination is not timely received, a default order will be issued. Any question as to whether the request is timely will be resolved upon judicial review.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, and 18-2-423, MCA

NEW RULE XXVII DEFAULT ORDERS AND DISMISSALS (1) A default order will be issued if the employer, contractor, subcontractor and/or the contracting agency fails to timely file a written response to the determination.

(2) The default order will specify the amount owed by the employer, contractor, subcontractor or the contracting agency to the employee as wages and/or penalties.

(3) A dismissal will be issued if there is a finding of no merit to the complaint.

(4) Appeals of default orders and dismissals must be made in writing within 15 days of the date the default order or dismissal was mailed or served upon the requesting party.

(5) Any question as to whether the appeal is timely will be resolved upon judicial review.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-212 and 39-3-216, MCA

NEW RULE XXVIII MANDATORY, NONBINDING MEDIATION (1) If a formal hearing is requested, the parties are required to fully present their cases at a mediation, prior to the formal hearing.

(2) Such mediation shall be completed within 20 days of the request for formal hearing.

(3) The mediation process is mandatory, informal, held in private without a verbatim record and is confidential in nature. All communications and evidence from the mediation are confidential.

(4) The mediator, appointed by the department, will issue a report following the mediation process recommending a solution to the dispute. The mediator's report is without judicial or administrative authority and is not binding on the parties.

(5) Nothing in this rule precludes the parties from agreeing to pursue additional voluntary nonbinding mediation in an effort to resolve the dispute.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 39-3-216, MCA

NEW RULE XXIX REQUEST FOR FORMAL HEARING (1) A party who has received an adverse decision from a compliance specialist may request a formal hearing. The request for a formal hearing must be made within 15 days of the date either the determination or the redetermination is mailed or served upon the party.

(2) A request must be in writing, mailed as specified in the adverse decision, and include the following:

(a) the name and address of the requesting party;

(b) the name and address of the opposing party; and

(c) a statement that the party desires a hearing.

(3) Upon receiving a timely, written request for a formal hearing, the department will commence contested case proceedings. Any question as to whether the request is timely will be resolved upon judicial review.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423 and 39-3-216, MCA

NEW RULE XXX APPEAL OF FORMAL HEARING (1) A party who has received an adverse decision may request an appeal. Appeal of a formal hearing order is made to district court.

(2) The time period in which to make an appeal is within 30 days of the date the decision of the hearing officer is mailed. The appeal must specifically identify the hearing officer's alleged error.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423 and 39-3-216, MCA

NEW RULE XXXI REQUEST FOR RELIEF IF MAIL IS NOT RECEIVED (1) A party alleging that it did not receive timely notice by mail of the complaint, determination or hearing process provided by these rules has the burden of proving that the party should be granted relief. The party seeking relief must present clear and convincing evidence to rebut the statutory presumption that a letter duly directed and mailed was received in the regular course of the mail, as provided in 26-1-602, MCA.

(2) All questions regarding alleged non-receipt of mail, or whether a request for a redetermination, a formal hearing, or an appeal was timely made must be resolved upon judicial review.

(3) Once a judgment is issued by a district court concerning a decision, any request for relief must be directed to the district court by a party (not the department on behalf of a party) pursuant to the Rules of Civil Procedure and be in the form required by the district court.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, and 18-2-423, MCA

NEW RULE XXXII COMPUTATION OF TIME PERIODS (1) In computing any period of time prescribed or allowed by these rules or any applicable statute, the day of the act, event, or default after which the designated time period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. A half holiday is not a holiday, but is considered as a regular day.

(2) For the purpose of these rules, an item sent to the department is timely if it is either postmarked or received by the department by not later than the last day of the time period.

(3) An item which does not have a postmark is considered received as of the date it is date-stamped by the department.

AUTH: 18-2-431 and 39-3-202, MCA

IMP: 18-2-403, 18-2-407, and 18-2-423, MCA

NEW RULE XXXIII FACSIMILE FILINGS (1) Any document required or allowed to be filed with the department may be filed by means of a telephonic facsimile communication device (fax).

(2) Filings with the department by facsimile are subject to the following conditions:

(a) a filing must conform with all applicable rules, except that only one copy of a document need be filed by facsimile even when multiple copies otherwise would be required;

(b) if a document is received after 5:00 p.m. mountain time, the date of filing of that document, for purposes of these rules, will be the date of the next regular work day; and

(c) the original document and any copies must be received by the department within five days of the facsimile transmittal or the filing will not be recognized as timely.

(3) The failure, malfunction, or unavailability of facsimile equipment does not excuse a party from the requirements of timely filing.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, and 18-2-423, MCA

NEW RULE XXXIV CONTRACT INELIGIBILITY/DEBARMENT

(1) After notice and an opportunity to be heard, the commissioner, acting by and through the department, may determine that a contractor, subcontractor or employer is debarred or ineligible to receive public works contracts for a period of up to three years. A contractor, subcontractor or employer, regardless of entity form, will be determined to be ineligible if the employer aggravatedly, willfully, or with gross negligence violates the provisions of Title 18, chapter 2, MCA, including but not limited to, actions such as:

(a) failing or refusing to pay the prevailing rate of wages to employees employed on public works projects;

(b) failing to respond to inquiries from the department to supply necessary payroll information and generally failing to cooperate in the investigation of the prevailing wage investigation; or

(c) submitting falsified payroll information to the department.

(2) Before placing a contractor, subcontractor or employer on the ineligible debarment list, the commissioner shall serve a notice of intended action upon the contractor, subcontractor or employer in the same manner as service of a summons or by certified mail, return receipt requested. The notice will include:

(a) a reference to 18-2-432, MCA;

(b) a short and concise statement of the matter(s) constituting a violation of Title 18, chapter 2, MCA;

(c) a statement of the party's right to request a contested case hearing and to be represented by counsel at such hearing, provided that any such request must be received by the commissioner in writing within 20 days of service of the notice;

(d) a statement that the party's name will be published on

a list of persons ineligible to receive public works contracts or subcontracts, unless the party requests a contested case hearing; and

(e) a statement that failure to make written request to the commissioner for a contested case hearing within the time specified constitutes a waiver of the right to a hearing.

(3) If a contractor, subcontractor or employer makes a timely request for a contested case hearing, a hearing will be held in accordance with the Montana Administrative Procedure Act.

(4) Upon the failure of the contractor, subcontractor or employer to request a contested case hearing within the time specified, the commissioner or the commissioner's designee shall enter an order supporting the ineligibility action.

(5) Debarment applies both to a firm and individuals. In the case of a firm, it may be applied against any or all businesses in which a firm has involvement (i.e., joint ventures), or over which it has ownership or control (i.e., subsidiaries). In the case of an individual, debarment may be applied to and enforced against any and all businesses in which the individual has any level of interest, ownership or control.

(6) If debarred by the federal government or any Montana government agency, a person may not bid on or otherwise participate in any public works project or contract in any capacity (prime contractor, subcontractor, supplier, etc.), including as a separate contractor, until after the completion of the entire debarment period, whether or not the department debars the individual. Debarment proceedings may continue even if the person ceases doing business during the proceedings.

(7) If an individual is debarred by any agency of the federal government for any period, the department may debar the individual for a period up to that set by the federal government without need for further debarment proceedings. The only evidence required in a debarment hearing in a case based on an existing debarment will be a certified copy of an order, agency letter, or other final action declaring the debarment in the other jurisdiction. Presence of a certified order does not preclude the individual from presenting evidence to dispute the proposed debarment or its length. If the individual is debarred by a branch or agency other than of the Montana or federal governments (i.e., another state, a county, etc.), or if the department may wish a debarment period exceeding that set by the other Montana agency or federal government, the department must hold debarment proceedings before increasing the debarment period.

(8) As used in this rule and [NEW RULE XXXIII], the following definitions apply:

(a) "Aggravatedly" means circumstances that, in conjunction with an act or omission in violation of Title 18, chapter 2, MCA, serve to increase the magnitude, enormity or reprehensibleness of the offense, violation, injury or damage.

(b) "Debarment" is an action taken or decision made by an agency, other than temporary determinations of nonresponsibility or suspension, that excludes a person from bidding on or

participating in public works projects and contracts.

(c) "Substantial financial interest" means:

(i) an ownership interest, whether directly or indirectly, of at least 20% of the entity; or

(ii) control over the entity, whether directly or indirectly applied, that is greater than any other single person or entity with an ownership interest.

(d) "Willfully" means that the act is done or omitted with a purpose or willingness to commit the act or make the omission. It does not require any intent to violate the law or to gain an advantage. The term has the same meaning as provided by 1-1-204, MCA.

(e) "Gross negligence" means an action involving negligence in excess of ordinary negligence.

AUTH: 18-2-431, MCA
IMP: 18-2-432, MCA

NEW RULE XXXV LIST OF INELIGIBLES (1) The department will publish a list of persons and entities that are ineligible to work on public works projects. The list will specify the dates of ineligibility. The list is public information and is available upon request from the department. The department will update the list as needed.

(2) The list will contain the name of ineligible employers and the names of any firms, corporations, partnerships or associations in which the employer or its owner(s) have a substantial financial interest. Those names will remain on the list for a period of three years from the date such names were first published on the list. The three year period of ineligibility will begin when the decision of the commissioner regarding ineligibility becomes final and no further appeals can be taken.

(3) An employer who desires to be removed from the list before the expiration of three years must show good cause for such removal. Such persons may petition the commissioner at any time during the period of ineligibility. The decision whether good cause exists to remove the employer from the list before the three year period expires rests in the sound discretion of the commissioner. In reviewing such petitions to determine if good cause exists, the commissioner shall consider the following matters:

(a) the history of the petitioner in taking all necessary measures to prevent or correct violations of statutes or rules;

(b) prior violations, if any, of statutes or rules;

(c) magnitude and seriousness of the violation; and

(d) other matters which indicate to the commissioner that the petitioner is not likely to violate these rules in the future.

AUTH: 18-2-431, MCA
IMP: 18-2-432, MCA

REASON: There is reasonable necessity to adopt NEW RULES I through XXXV because the proposed new rules will address areas and issues relating to prevailing wage claims not adequately

addressed in the prior rules. The Department is proposing these new rules as part of a continual quality improvement process and in an effort to further streamline the processing of prevailing wage claims.

5. The Department proposes to repeal the following rules:

24.16.9008 SERVICES-DEFINITION-EXCLUSIONS-EXAMPLES found at pages 24-613 and 24-614, Administrative Rules of Montana.
AUTH: 18-9-901, 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-411, and 18-2-422, MCA

24.16.9009 $25,000 LIMIT-ENFORCEMENT found at pages 24-615 through 24-616, Administrative Rules of Montana.
AUTH: 18-9-409, 18-2-431, MCA
IMP: 18-2-401, 18-2-403, 18-2-409, and 18-2-422, MCA

24.16.9010 PROCEDURES FOR ENFORCING THE ACT found at pages 24-639 and 24-640, Administrative Rules of Montana.
AUTH: 2-4-201, 18-2-431, MCA
IMP: 18-2-407, 18-2-409, 39-3-211, and 39-3-216, MCA

REASON: It is reasonably necessary to repeal rules 24.16.9008, 24.16.9009, and 24.16.9010 because the substance of these rules has been incorporated into proposed New Rules IX and XIX.

6. 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:

John Andrew
Labor Standards Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 6518
Helena, Montana 59604-6518

and must be received by no later than 5:00 p.m., March 15, 2002. Comments may also be submitted electronically as noted in the following paragraph.

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://dli.state.mt.us/calendar.htm, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, http://forums.dli.state.mt.us, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., March 15, 2002. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website

accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

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

9. The bill sponsor notice provisions of 2-4-302, MCA, do not apply.

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

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

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

Certified to the Secretary of State: February 4, 2002.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.301.107, and the repeal of ARM 24.301.215, pertaining to building codes

NOTICE OF PUBLIC HEARING

TO: All Concerned Persons

1. On April 3, 2002, at 10:00 a.m., a public hearing will be held in Basement Conference Room B07, 301 South Park, Helena, Montana, to consider the proposed amendment and repeal of rules pertaining to the Building Codes Bureau.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., March 29, 2002, to advise us of the nature of the accommodation that you need. Please contact Eric Fehlig, Department of Labor and Industry, Building Codes Bureau, 301 South Park, Room 239, P.O. Box 200517, Helena, Montana 59620-0517; telephone (406) 841-2040; Montana Relay 1-800-253-4091; TDD (406) 444-0532; facsimile (406) 841-2050.

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

24.301.107 MODIFICATIONS TO THE UNIFORM BUILDING CODE APPLICABLE ONLY TO THE DEPARTMENT'S CODE ENFORCEMENT PROGRAM

(1) through (8) Remain the same.

(9) Subsection 109.3 of the Uniform Building Code is amended for the department to read:

(a) "109.3.1 Certificate of Occupancy issued. After the building official or his agent inspects the building or structure and finds ~~substantial compliance with the intent of the Uniform Building Code~~ it was constructed in accordance with the provisions of the state building code, the building official may issue a certificate of occupancy, as referenced in 50-60-107, MCA, which shall contain the following:

1. The building permit number.

2. The address of the building.

3. The name and address of the owner.

4. A description of that portion of the building for which the certificate is issued.

5. A statement that the described portion of the building has been inspected for ~~substantial~~ compliance with the ~~Uniform Building Code~~ state building code for the group and division of occupancy and the use for which the proposed occupancy is classified.

6. The name of the building official."

(b) "109.3.2 Formal Written Approval. In situations where the department was unable to perform the required inspections referenced in section 108 of the Uniform Building Code, but no significant deficiencies from the state building code have been noted, the bureau may issue a letter of formal written approval in lieu of a certificate of occupancy."

~~(a) Since the department has insufficient staff to conduct all of the key inspections identified in subsection 108.5 of the Uniform Building Code at the proper times, the issued certificate of occupancy is not a certification or guarantee of total compliance with the Uniform Building Code.~~

(10) through (14) Remain the same.

AUTH: 50-60-203, MCA
IMP: 50-60-203, MCA

REASON: There is reasonable necessity to amend the rule to make the term "certificate of occupancy" consistent with the statutory definition of certificate of occupancy found in 50-60-107, MCA. On November 30, 2001, the Economic Affairs Interim Committee questioned the way the term was used in the rule. As part of the discussion with the Economic Affairs Interim Committee, the Department of Labor and Industry agreed that the existing language (now proposed to be stricken) was not appropriate and that the Department would amend the language to conform to statute.

4. The Department proposes to repeal ARM 24.301.215 in its entirety. The text of ARM 24.301.215 will be found on ARM page 24-30693. Since this page has not yet been printed in the Administrative Rules of Montana, the text of the rule is included here.

24.301.215 ADOPTION OF THE UNIFORM HOUSING CODE OR THE UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS (1) The adoption or use of the Uniform Housing Code or the Uniform Code for the Abatement of Dangerous Buildings by a local government is independent from any authority or requirement of the state building code. Local governments may not utilize fees paid from any permits authorized by Title 50, chapter 60, parts 1 through 6, MCA, to finance inspections, enforcement or a repair or demolition fund associated with the Uniform Housing Code or the Uniform Code for the Abatement of Dangerous Buildings.

AUTH: 50-60-203, MCA
IMP: 50-60-203, MCA

REASON: There is reasonable necessity to repeal ARM 24.301.215 because the Department believes the rule to be unnecessary and its repeal eliminates any possible conflict with statute that was referenced in discussions with the Economic Affairs Interim Committee on November 30, 2001.

5. Concerned persons may present their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to:

Department of Labor and Industry
Building Codes Bureau
301 South Park, Room 239
P.O. Box 200517
Helena, Montana 59620-0517

or by facsimile to (406) 841-2050, and must be received by no later than 5:00 p.m., April 3, 2002.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://dli.state.mt.us/calendar.htm, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, http://forums.dli.state.mt.us, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., April 3, 2002. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

7. The Building Codes Bureau maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this Bureau. 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 Building Codes Bureau administrative rule-making proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Building Codes Bureau, 301 South Park, Room 239, P.O. Box 200517, Helena, Montana, 59620-0517, or may be made by completing a request form at any rules hearing held by the Department.

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

9. Mark Cadwallader has been designated to preside over and conduct the hearing.

/s/ WILLIAM H. JELLISON
William H. Jellison, Bureau Chief
Building Codes Bureau

/s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

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

Certified to the Secretary of State: February 4, 2002.

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

In the matter of the amendment of ARM 37.108.507 pertaining to components of managed care plan quality assessment activities	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 16, 2002, the Department of Public Health and Human Services proposes to 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 February 28, 2002, 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 amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.108.507 COMPONENTS OF QUALITY ASSESSMENT ACTIVITIES

(1) Annually, the health carrier shall evaluate its quality assessment activities by using the following HEDIS year ~~2001~~ 2002 measures:

(a) through (3) remain the same.

(4) The department hereby adopts and incorporates by reference the HEDIS year 2002 measures for the categories listed in (1)(a) through (1)(e) above. The HEDIS year 2002 measures are developed by the national committee for quality assurance and provide a standardized mechanism for measuring and comparing the quality of services offered by managed care health plans. Copies of HEDIS 2002 measures are available from the National Committee for Quality Assurance, 2000 L Street NW, Suite 500, Washington, DC 20036.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105 and 33-36-302, MCA

3. The date change proposed above is necessary to incorporate the most up-to-date health plan employer and information set (HEDIS) measures developed by the National Committee for Quality Assurance, which are utilized to evaluate the effectiveness of quality control activities of managed care health plans and to allow consumers to compare the quality of those plans using the same set of measures. The HEDIS measures

are updated annually, with changes in diagnostic/procedural codes and measurement parameters. The reports generated using HEDIS are reported at a minimum to the department for quality assessment, the department's CHIP program and, in the case of Blue Cross/Blue Shield, to the national BC/BS association, and the measurement mechanisms used for those reports should be consistent with each other. Blue Cross/Blue Shield is required by its own company to purchase annually the updated software for the year in question; if the department continued to require HEDIS 2001 measurements, two different reporting systems would be required of BC/BS, to no particular purpose. Finally, if the managed care health plans are to be accredited, they are required by most accrediting agencies to utilize the most current HEDIS measures. For all of the above reasons, the department declined to remain with the HEDIS 2001 measures and proposes to incorporate those for 2002.

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 March 14, 2002. 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 March 14, 2002.

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 one based on the two managed care plans affected by rules covering quality assessment activities.

Dawn Sliva	**/s/ Gail Gray**
Rule Reviewer	**Director, Public Health and Human Services**

Certified to the Secretary of State February 4, 2002.

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

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

TO: All Concerned Persons

1. On March 7, 2002, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.15.315, 42.23.605, 42.23.607, and 42.23.608 relating to penalties and interest charges for late filed and late paid taxes.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., February 25, 2002, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.15.315 ORIGINAL RETURN DEFINED (1) through (4) remain the same.

(5) Late file and late pay penalties are assessed as required under 15-1-216 and 15-30-321, MCA, on the correct amount due on the original return.

(6) ~~The filing of an a~~Amended returns filed for tax years beginning before January 1, 2001, ~~by a taxpayer~~ will not change the calculation of the late file and late pay penalties on the original return.

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

(8) In the case of a net operating loss carry-back, no change will be made to the calculation of the late file and late pay penalty, and the underpayment interest on the original return.

(9) If required by 15-1-216 and 15-30-321, MCA, interest will be calculated on the original return. If an amendment is

made to the original return, interest will be calculated as required under 15-30-149~~,~~ or 15-30-142, MCA, as of the due date in (1) ~~above~~.

(8) and (9) remain the same but are renumbered (10) and (11).

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-1-216, 15-30-149, 15-30-321, and 15-30-241, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.315 in an effort to bring the department's rules into compliance with the law and ensure that all department tax types are being handled in a uniform manner and guarantee consistent treatment to all taxpayers. The Internal Revenue Service also treats similar tax returns in this manner.

42.23.605 PENALTY ~~ON DEFICIENCY ASSESSMENTS~~ AND INTEREST

(1) remains the same.

(2) ~~A penalty assessment may be appealed by the taxpayer under the provisions of ARM 42.2.613 through 42.2.621.~~ Amended returns will not change the calculation of the late file and late pay penalties on the original return for tax years beginning before January 1, 2001.

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

(4) In the case of a net operating loss carry-back, no change will be made to the calculation of the late file and late pay penalty, and the underpayment interest on the original return.

(5) A penalty assessment may be appealed by the taxpayer under the provisions of ARM 42.2.613 through 42.2.621.

AUTH: Sec. 15-31-501, MCA
IMP: Sec. 15-1-216, 15-1-222, 15-31-502, 15-31-503, and 15-31-510, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.23.605 to correct the catchphrase of the rule. Subsections (3) through (5) are added to bring the corporation license tax rules into compliance with statutory changes and ensure that all department tax types are being handled in a uniform manner. These amendments will assist both the taxpayer and department in guaranteeing consistent treatment for all taxpayers. Section 15-1-216, MCA, the uniform penalty and interest statute, and 15-31-501, MCA, the statute for estimated tax payments, are also being added to the implementation cites.

42.23.607 COMPUTATION OF QUARTERLY ESTIMATED TAX UNDER-PAYMENT INTEREST ~~PENALTY~~ (1) Except as provided in (2), a taxpayer is presumed to have earned income evenly throughout the year. Accordingly, if the tax liability is $5,000 or more at

the end of the year, the taxpayer is required to make estimated tax payments as described in 15-31-502, MCA. If the payments are not made in accordance with 15-31-502, MCA, the taxpayer must compute the quarterly estimated tax underpayment interest ~~penalty~~ on a form provided by the department.

(2) The provisions of (1) will not apply if the taxpayer can establish that it did not earn income evenly throughout the year. To do so, the taxpayer must show on the form provided by the department when the income was earned. Approval of the calculations shown on the form rests with the department. The department ~~which can~~ may request additional information to support the calculations.

(3) If estimated payments are required ~~to be submitted~~ and those payments are insufficient, not submitted, or are not submitted timely, the 12% per annum underpayment interest will be computed on the lesser of 80% of the current year's liability or 100% of last year's liability, provided that the last year was a period of 12 months and the corporation filed a return.

AUTH: Sec. 15-31-501, MCA
IMP: Sec. 15-1-216 and 15-31-510, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.23.607 to correct the reference of underpayment interest. The statute specifically refers to "underpayment interest" rather than "underpayment interest penalty."

42.23.608 BASIS FOR NOT WAIVING THE QUARTERLY ESTIMATED TAX UNDERPAYMENT INTEREST ~~PENALTY~~ (1) and (2) remain the same.

(3) Lack of knowledge about the estimated payment requirement is not a basis for having the underpayment interest ~~penalty~~ waived.

AUTH: Sec. 15-31-501, MCA
IMP: Sec. 15-31-502 and 15-31-510, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.23.608 for the same reason as shown in the reasonable necessity for ARM 42.23.607.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than March 14, 2002.

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

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State February 4, 2002

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

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

TO: All Concerned Persons

1. On March 13, 2002, at 1:00 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.18.106, 42.18.107, 42.18.109, 42.18.110, 42.18.112, 42.18.113, 42.18.115, 42.18.116, 42.18.118, 42.18.119, 42.18.121, and 42.18.122 relating to Montana appraisal plan rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Room 455, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., February 25, 2002, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.18.106 1997 MONTANA REAPPRAISAL PLAN (1) The Montana reappraisal plan implements the legislature's cyclical reappraisal program set forth in 15-7-111, MCA. The 1997 Montana reappraisal plan consists of seven parts:

(a) residential appraisal~~,~~;

(b) commercial appraisal~~,~~;

(c) agricultural and ~~timber~~ forest land appraisal~~,~~;

(d) industrial appraisal~~,~~;

(e) certification and training requirements~~,~~;

(f) manuals~~,~~; and

(g) progress reporting.

~~The Montana reappraisal plan implements the legislature's cyclical reappraisal program set forth in 15-7-111, MCA.~~

(2) The Montana reappraisal plan provides for the valuation of:

(a) residential property~~,~~;

(b) commercial property~~,~~;
(c) agricultural and ~~timberland~~ forest land property~~,~~; and
(d) industrial property.
(3) CAMAS, as defined in ARM 42.2.304, is used to assist in the valuation process. The department~~'s plan is to~~ determines a new appraised value for each:
(a) parcel of land~~,~~;
(b) ~~each~~ residential improvement~~,~~;
(c) ~~each~~ commercial improvement~~,~~;
(d) ~~each~~ agricultural improvement~~,~~; and
(e) ~~each~~ industrial improvement.
(4) ~~The department will enter the n~~New appraised values were entered on the tax rolls for tax year 1997.
~~(3)~~(5) This rule applies to tax years ~~from~~ beginning January 1, 1997, through December 31, ~~2006~~ 2002.
AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-111 and 15-7-133, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.18.106 are necessary to correct the ending date in which this rule applies. Other amendments to this rule only reflect clerical and housekeeping changes.

42.18.107 2003 MONTANA REAPPRAISAL PLAN (1) remains the same.
(2) The Montana reappraisal plan provides for the valuation of:
(a) residential property~~,~~;
(b) commercial property~~,~~;
(c) agricultural and forest land property~~,~~; and
(d) industrial property.
(3) CAMAS, as defined in ARM 42.2.304, is used to assist in the valuation process. The department~~'s plan is to~~ determines a new appraised value for each:
(a) parcel of land~~,~~;
(b) ~~each~~ residential improvement~~,~~;
(c) ~~each~~ commercial improvement~~,~~;
(d) ~~each~~ agricultural improvement~~,~~; and
(e) ~~each~~ industrial improvement.
(4) ~~The department will enter the n~~New appraised values will be entered on the tax rolls for tax year 2003.
~~(3)~~(5) ~~The results of t~~This ~~plan~~ rule apply~~ies~~ to tax years ~~beginning~~ January 1, 2003, ~~and thereafter~~ through December 31, 2008.
AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-111 and 15-7-133, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.18.107 are necessary to correct the ending date applicable to this rule. This rule applies to the appraisal cycle beginning on January 1, 2003, and will conclude on December 31, 2008. Other amendments to this rule only reflect clerical and housekeeping changes.

42.18.109 1997 RESIDENTIAL REAPPRAISAL PLAN (1) Multiple field reviews of each property will be kept to an absolute minimum. The reappraisal of residential property consists of ~~the~~:

(a) limited field reviews;

(b) comprehensive field reviews;

(c) collection, verification, and analysis of sales information;

(d) data entry of missing or updated information, new improvements, and sales information;

(e) development and review of CALP models, as CALP is defined in ARM 42.2.304;

(f) development of market models/benchmarking;

(g) generation and review of inventory contents sheets and comparable sales sheets; and

(h) final determinations of value.

(2) The reappraisal plan provide~~s~~d for limited field reviews ~~to be conducted from~~ beginning January 1, 1993, through December 31, 1994. Limited field review of residential property consist~~s~~ed of an external observation to:

(a) determine accuracy of existing information on the inventory content~~s~~ sheet~~s~~ and property record card;

(b) ~~to~~ observe condition;

(c) ~~to~~ review grade and depreciation assignment; and

(d) collect additional data.

(3) The reappraisal plan provide~~s~~d for comprehensive field reviews ~~to be conducted from~~ beginning January 1, 1993, through June 30, 1995. Appraisal staff ~~will~~ identif~~y~~ied specific areas of the county where property data need~~s~~ed a complete review. The comprehensive field review consist~~s~~ed of an internal inspection, and/or external inspection of the residential property. No call-backs ~~will be~~ were made to the property unless specifically requested by the taxpayer, the appraisal supervisor, or area manager.

(4) Residential property data entry consist~~s~~ed of correcting, updating, and adding residential property data on CAMAS. The process ~~will~~ also include~~d~~ the review of edit reports~~;~~, the addition of supplementary data to CAMAS~~;~~, and sketch vectoring.

(5) The collection, verification, analysis, and data entry of sales information is an important component of CAMAS. Procedures for collection, verification, and validation of sales information shall be formulated by the department. Accuracy of sales information is critical to the development of:

(a) accurate land valuation;

(b) benchmarking;

(c) ~~the development of~~ accurate market models;

(d) individual property final value determinations; and

(e) ~~the~~ defense of final value estimates.

(6) Residential lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, 1996, land market values.

(7) remains the same.

(8) Inventory contents sheets (ICS) and comparable sales sheets are generated and reviewed by appraisal staff. These sheets include:

(a) physical characteristics and component information;

(b) sales information~~,~~; ~~basic ownership,~~ and

(c) valuation information.

(9) The review ~~will~~ consists of:

(a) analyzing; and

(b) collecting component information such as condition, desirability, and utility (CDU) factors, and style of improvements.

(10) This review ~~will~~ allows the appraiser to compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review will result in ~~the~~ update~~e~~ing ~~of~~ CAMAS data.

~~(9)~~(11) Final determinations of value are conducted once all required field and program needs of CAMAS are met. The appraised value for residential property may include indicators of value using the:

(a) ~~the~~ cost approach; ~~and~~

(b) ~~the~~ sales comparison approach~~.~~; and

(c) when possible, income approach.

(12) The appraised value, supported by the most defensible market data~~, when available~~, serves as the value for ad valorem tax purposes.

~~(10)~~(13) This rule applies to tax years ~~from~~ January 1, 1997, through December 31, 2002.

AUTH: Sec. 15-1-201 and 15-7-111, MCA

IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.18.109 are necessary to correct the grammatical structure of the rule. These are only housekeeping changes.

42.18.110 2003 RESIDENTIAL REAPPRAISAL PLAN (1) The reappraisal of residential property consists of:

(a) field reviews;

(b) ~~the~~ collection, verification, and analysis of sales information;

(c) ~~the~~ data entry of missing or updated information, new improvements, and sales information;

(d) ~~the~~ development and review of CALP models, as CALP is defined in ARM 42.2.304;

(e) ~~the~~ development of sales comparison models/benchmarking;

(f) ~~the~~ use of door hangers where appropriate;

(g) ~~the~~ use of self-reporting forms, where appropriate;

(h) ~~the~~ generation and review of inventory contents sheets and comparable sales sheets; and

(i) final determinations of value.

(2) through (4) remain the same.

(5) Residential property data entry consists of correcting, updating, and adding residential property data on CAMAS. The process ~~will also~~ includes the review of edit

reports~~;~~, the addition of supplementary data to CAMAS~~;~~, and sketch vectoring.

(6) The collection, verification, analysis, and data entry of sales information is an important component of CAMAS. Accuracy of sales information is critical to the development of:

(a) accurate land valuation;

(b) benchmarking;

(c) ~~the development of~~ accurate sales comparison models;

(d) individual property final value determinations; and

(e) ~~the~~ defense of final value estimates.

(7) Residential lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models ~~will~~ reflect January 1, 2002, land market values.

(8) remains the same.

(9) ~~Property record cards~~ Inventory contents sheets (ICS) and comparable sales sheets are generated and reviewed by appraisal staff. These sheets include:

(a) physical characteristics and component information~~,~~;

(b) sales information~~,~~; ~~basic ownership,~~ and

(c) valuation information.

(10) The review ~~will~~ consists of analyzing and collecting component information such as condition and style of improvements. This review ~~will~~ allows the appraiser to compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review ~~will~~ results in ~~the~~ updateing ~~of~~ CAMAS data.

~~(10)~~(11) Final determinations of value are conducted once all required field and program needs of CAMAS are met. The appraised value for residential property may include indicators of value using the:

(a) ~~the~~ cost approach;

(b) ~~the~~ sales comparison approach; and

(c) when possible, ~~the~~ income approach.

(11) remains the same but is renumbered (12).

~~(12)~~(13) ~~The results of t~~This rule apply~~ies~~ to tax years ~~beginning~~ January 1, 2003, ~~and thereafter~~ through December 31, 2008.

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.18.110 are necessary to correct the ending date applicable to this rule. This rule applies to the appraisal cycle beginning on January 1, 2003, and will conclude on December 31, 2008. Other amendments to this rule only reflect clerical and housekeeping changes.

42.18.112 1997 COMMERCIAL REAPPRAISAL PLAN (1) The reappraisal of commercial property consists of:

(a) and (b) remain the same.

(c) collection, verification, and analysis of sales and income information;

(d) through (h) remain the same.

(2) remains the same.

(3) The reappraisal plan provide~~s~~d for limited field reviews ~~to be~~ conducted ~~from~~ January 1, 1993, through December 31, 1994. A limited field review of commercial property consists of an external observation to:

(a) determine accuracy of existing information on the property record card;

(b) observe condition;

(c) review depreciation assignment; and

(d) collect additional data.

(4) The reappraisal plan provide~~s~~d for comprehensive field reviews ~~to be conducted from~~ beginning January 1, 1993, through June 30, 1995. Appraisal staff ~~will~~ identif~~y~~ied specific areas of the county where property data need~~s~~ed a complete review. The comprehensive field review consist~~s~~ed of an internal inspection and/or external inspection of the commercial property. No call-backs ~~will be~~ were made to the property unless specifically requested by the taxpayer or department.

(5) Commercial property data consists of correcting, updating, and adding commercial property data on CAMAS.

(6) The collection, verification, analysis, and data entry of sales information and income and expense information is an important component of CAMAS. Procedures for collection, verification, and validation of sales information and income and expense information shall be formulated by the department. Accuracy of sales information and income and expense information is critical to:

(a) accurate land valuation;

(b) benchmarking;

(c) ~~the~~ development of accurate income models;

(d) individual property final value determinations; and

(e) ~~the~~ defense of final value estimates.

(7) Commercial lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, 1996, land market values.

(8) remains the same.

(9) Inventory contents sheets (ICS) and cost and income reports are generated and reviewed by appraisal staff. These sheets include:

(a) physical characteristics and component information~~,~~;

(b) income information~~,~~;

(c) sales information~~,~~; ~~basic ownership information,~~ and

(d) valuation information.

(10) The review ~~will~~ consists of analyzing and collecting component information. This review ~~will~~ allows the appraiser to review and compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review ~~will~~ results in ~~the~~ update~~ing of~~ CAMAS data.

~~(10)~~(11) Final determinations of value are conducted once all required field and program needs of CAMAS are met. The appraisal value for commercial property may include indicators of value using the:

(a) ~~the~~ cost approach;
(b) ~~the~~ income approach; and
(c) when possible, ~~the~~ sales comparison approach.
(11) remains the same but is renumbered (12).
~~(12)~~(13) This rule applies to tax years ~~from~~ January 1, 1997, through December 31, 2002.
AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.18.112 are necessary to correct the grammatical structure of the rule. These are only housekeeping changes.

42.18.113 2003 COMMERCIAL REAPPRAISAL PLAN (1) The reappraisal of commercial property consists of:
(a) remains the same.
(b) collection, verification, and analysis of sales and income information;
(c) through (g) remain the same.
(2) remains the same.
(3) The reappraisal plan provides for field reviews. A field review of commercial property consists of an internal or external observation to:
(a) determine accuracy of existing information on the inventory contents sheets (ICS) and property record card;
(b) observe condition;
(c) review depreciation assignment; and
(d) collect additional data.
(4) remains the same.
(5) Commercial property data consists of correcting, updating, and adding commercial property data on CAMAS.
(6) The collection, verification, analysis, and data entry of sales information and income and expense information is an important component of CAMAS. Accuracy of sales information and income and expense information is critical to:
(a) through (e) remain the same.
(7) Commercial lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models ~~will~~ reflect January 1, 2002, land market values.
(8) remains the same.
(9) Inventory contents sheets (ICS) and cost and income reports are generated and reviewed by appraisal staff. These sheets include:
(a) physical characteristics and component information~~,~~;
(b) income information~~,~~;
(c) sales information~~,~~; ~~basic ownership information,~~ and
(d) valuation information.
(10) The review ~~will~~ consists of analyzing and collecting component information. This review ~~will~~ allows the appraiser to review and compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review ~~will~~ results in ~~the~~ updateing ~~of~~ CAMAS data.

~~(10)~~(11) Final determinations of value are conducted once all required field and program needs of CAMAS are met. The appraisal value for commercial property may include indicators of value using the:

(a) ~~the~~ cost approach;

(b) ~~the~~ income approach; and

(c) when possible, ~~the~~ sales comparison approach.

(11) remains the same but is renumbered (12).

~~(12)~~(13) ~~The results of t~~This rule apply~~ies~~ to tax years ~~beginning~~ January 1, 2003, ~~and thereafter~~ through December 31, 2008.

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.18.113 are necessary to correct the ending date applicable to this rule. This rule applies to the appraisal cycle beginning on January 1, 2003, and will conclude on December 31, 2008. Other amendments to this rule only reflect clerical and housekeeping changes.

42.18.115 1997 AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL PLAN (1) Agricultural and forest lands are valued in accordance with ~~administrative rules adopted by the department in~~ ARM Title 42, chapter 20. In accordance with the rules in chapter 20, ~~U~~use changes are updated annually on both agricultural and forest lands. For agricultural lands the valuation methodology and agricultural lands valuation schedules are developed in accordance with 15-7-201, MCA. For forest lands the valuation methodology and forest lands valuation schedules are developed in accordance with 15-44-103, MCA. The agricultural and forest lands values ~~will~~ reflect productivity values in accordance with 15-7-201 and 15-44-103, MCA. Agricultural and forest lands values will be placed on the tax rolls for tax year 1997.

(2) The reappraisal of agricultural/forest lands consists of:

(a) limited field reviews;

(b) comprehensive field reviews of agricultural/forest lands improvements;

(c) agricultural/forest lands property data collection and analysis;

(d) ~~the~~ data entry of agricultural/forest lands information;

(e) ~~the~~ generation and review of inventory contents sheets (ICS); and

(f) final determinations of value.

(3) through (5) remain the same.

(6) Agricultural/forest lands property data entry consists of correcting, updating, and adding agricultural/forest lands property data to CAMAS. The correction, updating, and addition process also consists of reviewing edit reports which result from that process, the entry of agricultural/forest lands information to CAMAS, the addition of improvement data

(outbuildings and residences) to CAMAS, and sketch vectoring.

(7) remains the same.

(8) The review consists of:

(a) analyzing;

(b) collecting component information on improvements; and

(c) reviewing productivity information on agricultural/forest lands.

(9) This review allows the appraiser to compare property information to ~~an~~ estimate ~~of~~ value. Discrepancies in data or the collection of additional information required by the review ~~will~~ result**s** in the update**ing** of data on CAMAS. The addition or refinement of existing data results in a more accurate valuation estimate.

(9) and (10) remain the same but are renumbered (10) and (11).

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-7-111, 15-7-201, and 15-44-103, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.18.115 are necessary to correct the grammatical structure of the rule. These are only housekeeping changes.

42.18.116 2003 AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL PLAN (1) Agricultural and forest lands are valued in accordance with ARM Title 42, chapter 20. Use changes are updated annually on both agricultural and forest lands. For agricultural land**s** the valuation methodology and agricultural land**s** valuation schedules are developed in accordance with 15-7-201, MCA. For forest lands the valuation methodology and forest lands valuation schedules are developed in accordance with 15-44-103, MCA. The agricultural and forest lands values will reflect productivity values in accordance with 15-7-201 and 15-44-103, MCA.

(2) through (5) remain the same.

(6) Agricultural/forest lands property data entry consists of correcting, updating, and adding agricultural/forest lands property data to CAMAS. The correction, updating, and addition process also consists of reviewing edit reports which result from that process, the entry of agricultural/forest lands information to CAMAS, the addition of improvement data (outbuildings and residences) to CAMAS, and sketch vectoring.

(7) ~~Property record cards~~ Inventory contents sheets (ICS) and comparable sales sheets are generated and reviewed by appraisal staff. ~~The property record cards~~ These sheets include:

(a) physical characteristic and component information for agricultural/forest lands improvements;

(b) productivity information for agricultural/forest lands;

~~(c) basic ownership information;~~ and

~~(d)~~(c) valuation information.

(8) The review consists of:

(a) analyzing;

(b) collecting component information on improvements; and

(c) reviewing productivity information on agricultural/forest lands.

(9) This review allows the appraiser to compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review ~~will~~ result<u>s</u> in ~~the~~ update<u>ing</u> ~~of~~ data on CAMAS. The addition or refinement of existing data results in a more accurate valuation estimate.

(10) Final determinations of value are conducted once all required field and program needs of CAMAS are met. The appraised value for agricultural/forest lands property improvements includes an estimate of market value using the cost approach and, when possible, the sales comparison ~~approach~~ <u>and income approaches</u>.

(11) <u>The appraisal value supported by the most defensible valuation information serves as the value for ad valorem tax purposes.</u>

<u>(12)</u> ~~The results of t~~<u>T</u>his rule appl<u>y</u>~~y~~<u>ies</u> to tax years ~~beginning~~ January 1, 2003, ~~and thereafter~~ <u>through December 31, 2008</u>.

<u>AUTH</u>: Sec. 15-1-201 and 15-7-111, MCA
<u>IMP</u>: Sec. 15-7-111, MCA

<u>REASONABLE NECESSITY</u>: The proposed amendments to ARM 42.18.116 are necessary to correct the ending date applicable to this rule. This rule applies to the appraisal cycle beginning on January 1, 2003, and will conclude on December 31, 2008. Other amendments to this rule only reflect clerical and housekeeping changes.

<u>42.18.118 1997 INDUSTRIAL PROPERTY REAPPRAISAL</u>

(1) Approximately 1,500 industrial properties are appraised by industrial appraisers<u>,</u> and the resulting appraised values are distributed to the appropriate ~~local~~ department field office. Each industrial property ~~will be~~ <u>is</u> reappraised annually.

(2) remains the same.

(3) This rule applies to tax years ~~from~~ January 1, 1997, through December 31, 2002.

<u>AUTH</u>: Sec. 15-1-201 and 15-7-111, MCA
<u>IMP</u>: Sec. 15-7-111, MCA

<u>REASONABLE NECESSITY</u>: The proposed amendments to ARM 42.18.118 are necessary to correct the grammatical structure of the rule. These are only housekeeping changes.

<u>42.18.119 2003 INDUSTRIAL PROPERTY REAPPRAISAL</u>

(1) Industrial properties are appraised by industrial appraisers<u>,</u> and the resulting appraised values are distributed to the appropriate ~~local~~ department field office. Each industrial property ~~will be~~ <u>is</u> reappraised annually.

(2) remains the same.

(3) ~~The results of t~~<u>T</u>his rule appl<u>y</u>~~y~~<u>ies</u> to tax years ~~beginning~~ January 1, 2003, ~~and thereafter~~ <u>through December 31,</u>

2008.

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.18.119 are necessary to correct the ending date applicable to this rule. This rule applies to the appraisal cycle beginning on January 1, 2003, and will conclude on December 31, 2008. Other amendments to this rule only reflect clerical and housekeeping changes.

42.18.121 VALUATION MANUALS (1) For the ~~reappraisal cycle ending~~ period January 1, 1993 through December 31, 1996, the ~~1996~~ 1992 Montana Appraisal Manual ~~will be~~ is used for valuing residential and agricultural/forest lands ~~real property~~ new construction and use changes. The cost base schedules ~~will~~ reflect January 1, ~~1996~~ 1992, cost information.

(2) For the reappraisal cycle ending December 31, 1996, the 1996 Montana Appraisal Manual is used for valuing residential and agricultural/forest lands real property. The cost base schedules reflect January 1, 1996, cost information. Reappraisal values were used for property tax purposes for the 1997 tax year.

~~(2)~~(3) For the ~~reappraisal cycle ending~~ period January 1, 1993, through December 31, 1996, the ~~1996~~ 1992 Montana Appraisal Manual ~~will be~~ is used for valuing commercial and industrial ~~real property~~ new construction and use changes. ~~if~~ If the property is not listed~~. If not~~ in the 1992 Montana Appraisal Manual, other construction cost manuals such as Boeckh; Marshall Valuation Service Manual; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close as possible to the Montana Appraisal Manual. The cost base schedules will reflect January 1, ~~1996~~ 1992, cost information.

~~(3)~~(4) For the reappraisal cycle ending December 31, 1996, the 1996 Montana Appraisal Manual is used for valuing commercial and industrial real property. If the property is not listed in the 1996 Montana Appraisal Manual, other construction cost manuals such as Boeckh; Marshall Valuation Service; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc;, entitled "Building Construction Cost Data" is used with a publication date as close as possible to the Montana Appraisal Manual. The cost base schedules reflect January 1, 1996, cost information. Reappraisal values were used for property tax purposes for the 1997 tax year.

(5) Copies of the valuation manuals used by the department may be reviewed in the ~~local~~ department field office or purchased from the department by writing to Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.

~~(4)~~(6) ~~The results of t~~This rule apply~~ies~~ to tax years ~~beginning~~ January 1, ~~1997~~ 1993, through December 31, 2002.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.18.121 are necessary to correct the grammatical structure of the rule and update appraisal manual dates. Additional language was added to address current reappraisal manual references.

42.18.122 REVALUATION MANUALS (1) For residential, and agricultural/forest lands new construction, the ~~January 1,~~ 1996~~,~~ Montana Appraisal Manual ~~will be~~ is used through tax year 2002.

(2) For the reappraisal cycle ending December 31, 2002, the 2002 ~~Marshall Valuation Service~~ Montana Appraisal Manual, adjusted for local conditions, will be used for valuing residential and agricultural/forest lands real property. The cost base schedules ~~will~~ reflect January 1, 2002, cost information.

(3) For commercial and industrial new construction the ~~January 1,~~ 1996~~,~~ Montana Appraisal Manual will be used through tax year 2002. If the property is not listed in the 1996 Montana Appraisal Manual, other construction cost manuals, such as Marshall Valuation Service, Boeckh, or Means, will be used with a publication date as close to the 1996 Montana Appraisal Manual as possible.

(4) For the reappraisal cycle ending December 31, 2002, the 2002 ~~Marshall Valuation Service~~ Montana Appraisal Manual, adjusted for local conditions, will be used for valuing commercial and industrial real property. ~~if~~ If the property is not listed in the 2002 Montana Appraisal Manual, ~~. If not,~~ other construction cost manuals such as Marshall Valuation Service, Boeckh~~;~~, Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close ~~as possible~~ to the ~~Marshall Valuation Service~~ 2002 Montana Appraisal Manual as possible. The cost base schedules ~~will~~ reflect January 1, 2002, cost information.

(5) Copies of the valuation manuals used by the department may be reviewed in the ~~local~~ department field office or purchased from the department by writing to the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.

(6) ~~The results of t~~This rule apply~~y~~ies to tax years ~~beginning~~ January 1, 2003, ~~and thereafter~~ through December 31, 2008.

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.18.122 are necessary to correct the ending date applicable to this rule. This rule applies to the appraisal cycle beginning on January 1, 2003, and will conclude on December 31, 2008. Other amendments to this rule only reflect clerical and housekeeping changes.

4. Concerned persons may submit their data, views, or

arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than March 22, 2002.

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

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State February 4, 2002

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the proposed adoption of New Rules I through XII and amendment of ARM 42.22.1311 and 42.23.513 relating to exemptions, reduced tax rates, and credits for energy facilities	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On March 12, 2002, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rules I through XII and amendment of ARM 42.22.1311 and 42.23.513 relating to tax exemptions, reduced tax rates, and credits for energy facilities.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., February 25, 2002, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

NEW RULE I DEFINITIONS The following definitions apply to terms used in this sub-chapter:

(1) "Appropriate time period" as referenced in 15-32-403, MCA, is defined as a one-year period beginning January 1 and ending December 31.

(2) "Customer" is defined as a retail purchaser or distribution service provider.

(3) "Placed in service" as referenced in 15-32-404, MCA, shall begin when the new industry endeavor begins commercial operation.

AUTH: Sec. 15-1-201, 15-30-305, 15-32-407, and 15-35-122, MCA

IMP: Sec. 15-24-3001, 15-32-404, and 15-35-103, MCA

REASONABLE NECESSITY: The department proposes to adopt new rule I to address terms used in the rules regarding energy credits and exemptions. The definitions apply to rules proposed to clarify statutes codified from HB 643 and SB 134, 506, and 508

of the 2001 legislative session.

NEW RULE II ALTERNATE RENEWABLE ENERGY GENERATION FACILITIES EXEMPTION - LESS THAN ONE MEGAWATT (1) For machinery and equipment to qualify for the alternative renewable energy generation facilities exemption, the facility must be powered by an alternative renewable energy source as defined in 90-4-102, MCA, and be less than one megawatt.

(2) To obtain the alternative renewable energy generation facilities tax exemption for machinery and equipment that has a nameplate capacity of less than one megawatt, the property owner of record or the property owner's agent must submit an application to the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805, on or before March 31 of the year for which an exemption is sought

AUTH: Sec. 15-1-201 and 15-1-217, MCA
IMP: Sec. 15-6-225, MCA

REASONABLE NECESSITY: The department proposes to adopt new rule II because it believes there is a requirement to file an application with the department to receive the exemption. The application will notify the department of the existence of new property and provide a description of that property. The application is the basis for the justification to exempt the property. For those facilities greater than one megawatt the taxpayer may qualify for new or expanding industry property tax exemption. The taxpayer can make application on form number CAB-1 available from the department. These energy rules will be located in chapter 4 of Title 42 with other department energy rules. This rule applies to statutory changes made by SB 506 of the 2001 legislative session.

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

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

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

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

(A) amount of power being sold;

(B) price; and

(C) term.

(b) If an abstract of a contract is not provided pursuant to (2)(a), qualification for an exemption, reduced tax rate, or credit must be shown through proof of publication in the legal section of the following six Montana newspapers:

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

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

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

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

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

(iii) appropriate person to contact regarding the offer.

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

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

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

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

REASONABLE NECESSITY: The department is proposing to adopt New Rule III to establish that the new facility has met the requirements of offering a contract. The department believes there is a requirement that it be notified of the offer to ensure that the offer is bona fide or a contract exists. Taxpayers are encouraged to file the request for exemption, reduced tax rate, or credit before March 31 of the year for which the exemption, reduced tax rate, or credit is sought. The material being requested by the department will be used to confirm the exemption, reduced tax rate, or credit. The department believes it is necessary to establish a review period to approve or deny the requested exemption, reduced tax rate, or credit to provide finality to the process. This rule applies to statutory changes made by HB 643 and SB 134, 506, and 508 of the 2001 legislative session.

NEW RULE IV ALLOWABLE COSTS OF PRODUCTION, RATE OF RETURN, AND NET GENERATING OUTPUT - VERFICATION AND REPORTING

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

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

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

(a) non-related corporate overhead;

(b) advertising;

(c) benefit restoration;

(d) dues, contribution; and

(e) other settlement items.

(4) In order to qualify for the exemption, reduced tax rate, or credit the following (in addition to the information required in New Rule III):

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

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

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

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

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

(7) The department may issue a notice of disallowance at any time during the applicable statutory period, plus one year, in which the exemption, reduced tax rate, or credit applies if

the applicable percentage rate of the facility's net generating output is not maintained or the taxpayer fails to perform the contract or verify compliance with the requirements to contract offer output.

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

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

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

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

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

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

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

NEW RULE VI APPEAL RIGHTS (1) For energy-related property tax exemptions or tax rate reductions, an applicant may appeal the department's decision to the state tax appeal board within 30 days of receiving notice of denial from the department.

(2) For energy-related tax or reduced tax rate credits, an applicant may appeal the department's decision to the office of dispute resolution in accordance with ARM 42.2.311 through 42.2.326 within 30 days of receiving notice from the department.

AUTH: 15-1-201, MCA
IMP: 15-1-211 and 15-2-302, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule VI to clarify the appropriate location to file appeals

pertaining to energy-related property tax exemptions and income tax credits for the rules found in this chapter. This rule applies to statutory changes made by HB 643 and SB 134, 506, and 508 of the 2001 legislative session.

NEW RULE VII COMMERCIAL USE FOR INCOME TAX (1) With regard to 15-32-404, MCA, the investment must be made in certain depreciable property qualifying under section 38 of the I.R.C. of 1986, as amended, for a commercial system or a net metering system, as defined in 69-8-103, MCA. Property placed in service for personal use does not qualify for this credit.

AUTH: Sec. 15-30-305, 15-31-501, and 15-32-407, MCA
IMP: Sec. 15-32-402, 15-32-403, 15-32-404, and 69-8-103, MCA

REASONABLE NECESSITY: The department proposes to adopt new rule VII to clarify the statute's intent of offering a credit for commercial use as opposed to personal use. Confusion has occurred in the past by individual taxpayers who have attempted to claim the credit for personal use as opposed to commercial use as required by the law. This rule applies to statutory changes made by SB 506 of the 2001 legislative session.

NEW RULE VIII PROPERTY TAX EXEMPTION - NONCOMMERCIAL ELECTRICAL GENERATION MACHINERY AND EQUIPMENT (1) In order to obtain a property tax exemption for noncommercial electrical generation machinery and equipment, the property owner of record or the property owner's agent must notify the department on its annual reporting form that the existence of noncommercial electrical generation machinery and equipment is in their ownership.

(2) The department will request from the property owner the appropriate information to determine the amount of the property tax exemption. The department will also verify with the department of environmental quality that the electrical generation machinery and equipment comply with the provisions of 75-2-211 and 75-2-215, MCA, and the supporting documentation. The department will determine the amount of the property tax exemption. The applicant will be advised in writing of the decision.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-226, 75-2-211, and 75-2-215, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule VIII because there is a requirement to file an application with the department to receive the exemption. The application will notify the department of the existence of new property and provide a description of that property. The application is the basis for the justification to exempt the property. New Rule VI provides for a remedy for taxpayers wishing to appeal the decisions of the department. New Rule VIII applies to statutory changes made by HB 600 of the 2001 legislative session.

NEW RULE IX WIND ENERGY TAX CREDITS FOR GENERATION

FACILITIES LOCATED IN EXTERIOR BOUNDARIES OF A MONTANA INDIAN RESERVATION - TRIBAL EMPLOYMENT AGREEMENT (1) To qualify for the 15-year carry-forward provision and the elimination of the federal limitation as shown in 15-32-403, MCA, a copy of the signed agreement with the tribal government of the reservation must be attached to the applicable tax return filed for the first taxable period for which the credit is reported.

(2) The signed agreement must include the details of the:

(a) training and employment of tribal members in the construction;

(b) tribal members involvement in the operation; and

(c) maintenance of the commercial system.

AUTH: Sec. 15-1-201 and 15-32-407, MCA
IMP: Sec. 15-32-403 and 15-32-404, MCA

REASONABLE NECESSITY: The department is proposing New Rule IX to clarify that it will be necessary for the department to review the signed tribal contract in order for the credit to be allowed. This rule applies to statutory changes made by HB 643 of the 2001 legislative session.

NEW RULE X WIND ENERGY TAX CREDITS FOR GENERATION FACILITIES LOCATED ON SCHOOL TRUST LAND (1) To qualify for the elimination of the federal limitation, a copy of the signed agreement with the state to make annual lease payments to the permanent school trust fund must be attached to the applicable tax return filed for the first taxable period for which the credit is taken.

(2) If, for any reason, the state trust land on which the commercial alternative energy system operates is traded for other land, any credit granted becomes subject to the limitations specified in 15-32-403, MCA.

AUTH: Sec. 15-32-407, MCA
IMP: Sec. 15-32-403, MCA

REASONABLE NECESSITY: The department is proposing New Rule X to clarify the agreement with the state, and the department must review the signed contract. The rule further establishes that the elimination of the federal credit limitation would no longer apply if the state trust land is traded for other land. This rule applies to statutory changes made by SB 506 of the 2001 legislative session.

NEW RULE XI DEDUCTIBILITY OF IMPACT FEE FOR LOCAL GOVERNMENT AND SCHOOL DISTRICTS (1) The impact fee for local government and school districts as required in 15-24-3005, MCA, is an allowable deduction from taxable income.

AUTH: Sec. 15-30-305 and 15-31-501, MCA
IMP: Sec. 15-24-3005, 15-30-111, and 15-30-121, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule XI to clarify that impact fees are an allowable deduction for income tax purposes. This rule applies to statutory changes made by SB 508 of the 2001 legislative session.

NEW RULE XII ENERGY AND CONSERVATION INDIVIDUAL INCOME TAX CREDITS (1) A Montana individual income tax credit is allowed by filing an individual income tax return form 2 and the appropriate supplemental forms developed by the department. The return and supplemental forms must be filed by the 15th day of the fourth month following the close of the taxpayer's tax year and mailed to the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.

(a) To qualify for the energy-conserving expenditure credit allowed under 15-32-109, MCA, a taxpayer must file form ENRG-C providing information as prescribed on the form at the time the Montana individual income tax return form 2 is filed.

(b) To qualify for the geothermal energy system credit allowed under 15-32-115, MCA, a taxpayer must file form ENRG-B providing information as prescribed on the form at the time the Montana individual income tax return form 2 is filed.

(c) To qualify for the alternative energy system credit using a recognized non-fossil form of energy generation or though the installation of a low-emission wood or biomass combustion device under 15-32-201, MCA, a taxpayer must file form ENRG-B providing information as prescribed on the form at the time the Montana individual income tax return form 2 is filed.

AUTH: 15-1-201 and 15-32-203, MCA
IMP: 15-32-109, 15-32-115, and 15-32-201, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule XII to identify the appropriate forms, which much be used and filed with an individual income tax return in order to obtain the credit allowed.

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

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) and (2) remain the same.

2001 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS

Description	Trend Table	Life
(a) through (az) remain the same.		
(ba) Non-commercial electrical generation machinery and equipment that qualifies under 15-6-226, MCA	11	16

(ba) through (cg) remain the same but are re-earmarked (bb) through (ch).

(3) remains the same.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-138 and 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM

42.22.1311 to add a new category of non-commercial electrical generation machinery and equipment to the trend tables and establish a life for depreciation purposes.

42.23.513 MANUFACTURING DEFINED (1) A manufacturing corporation is one engaged in the mechanical or chemical transformation of materials or substances into new products or the production of energy by means of an alternative renewable energy source as defined in 90-4-102, MCA. The manufacturing facilities for the transformation of materials or substances into new products are usually described as plants, factories, or mills and characteristically use power driven machines and materials handling equipment. Corporations engaged in assembling component parts of manufactured products are also considered to be manufacturing, if the new product is neither a structure nor other fixed improvement. Included in this definition is the blending of materials such as lubricating oils, plastics, resins, or liquors.

(2) through (6) remain the same.

AUTH: Sec. 15-31-124, MCA
IMP: Sec. 15-6-138, 15-8-111, 15-31-124, and 90-4-102, MCA

REASONABLE NECESSITY: For purposes of the new or expanded industry credit, the department is proposing to amend ARM 42.23.513 to expand the definition of "manufacturing" as set forth in SB 506 of the 2001 legislative session.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than March 22, 2002.

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

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

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 notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 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 February 4, 2002

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the proposed adoption of New Rule I relating to the production threshold for beer taxes) NOTICE OF PROPOSED ADOPTION))) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 12, 2002, the department proposes to adopt New Rule I, relating to the production threshold for beer taxes.

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 March 1, 2002, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax number (406) 444-3696; e-mail address canderson@state.mt.us.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I PRODUCTION THRESHOLD (1) The month after a brewer exceeds a production threshold, the tax rate will increase to the next incremental tax rate. For example, if the 5,001st barrel is produced on May 20, the tax rate will be $1.30 for all of the month of May. It will increase to $2.30 beginning with the month of June's production and will continue at that rate until the month the next threshold is exceeded, if applicable. Each brewer will notify both the department and its wholesalers, in writing, by the end of the month in which it exceeds a production threshold.

(2) In situations where a brewer produces over 20,000 barrels nationally and internationally in the first month of the fiscal year, all of its production will be taxed at $4.30 for the year.

(3) The number of barrels of beer produced by a brewer in a year is the total of all barrels produced nationally and internationally.

(4) For purposes of this tax, a year is the state's fiscal year, July 1 through June 30.

AUTH: 16-1-303, MCA
IMP: 16-1-406, MCA

REASONABLE NECESSITY: The department is proposing New Rule I to establish the notification requirement for the brewers. This requirement must be sent to both the department and the wholesalers when the established production thresholds are exceeded in order that an increased tax rate be implemented

and enforced for the current fiscal year. An example is also set forth to clarify the applicability of the incremental rates. The rule explains what tax rate will be applied when multiple levels are reached in a month. The rule states that production is measured on a national level. The statute does not address when a year ends and begins so the rule clarifies this issue. This rule applies to statutory changes made by SB 317 of the 2001 legislative session as codified at 16-1-406, MCA.

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 March 15, 2002.

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 March 15, 2002.

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
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State February 4, 2002

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.201 pertaining to water quality permit and authorization fees	NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On December 6, 2001, the Board of Environmental Review published a notice of public hearing on the proposed amendment of the above-stated rule at page 2361, 2001 Montana Administrative Register, issue number 23. The hearing was held on January 3, 2002.

2. The Board has amended ARM 17.30.201 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.30.201 PERMIT APPLICATION, DEGRADATION AUTHORIZATION, AND ANNUAL PERMIT FEES (1) through (7) remain the same as proposed, except for the following change in Schedule III.A shown below.

Schedule III.A Annual Fee for Individual Permits

Category	Minimum Fee[1]	Fee Per Million Gallons of Effluent per Day (MGD)
Publicly owned treatment works - major	$2,000	$2,500
Privately owned treatment works - major	3,000	3,000[2]
Publicly owned treatment works - minor	1,000	2,500
Privately owned treatment works - minor	~~750~~ 1,000	3,000[2]
Privately owned treatment works - minor[3]	750	750
Ground water, domestic wastes	750	3,000
Ground water, industrial or other wastes	1,500	3,000[2]

[1] Per outfall, multiple storm water outfalls limited to a maximum of five outfalls.
[2] Except $750 per MGD if effluent is noncontact cooling water.
[3] Noncontact cooling water only.

Schedule III.B through (10)(b) remain the same as proposed.

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

Comment No. 1: Several commentors stated opposition to any fee increase due to a variety of factors. Chief among the

reasons was the economic burden on small communities and businesses and the belief that state government should not increase its number of employees at this time.

Response: The proposed fees will cover the cost of additional staff in the Department's Water Protection Bureau as well as increased program requirements imposed since the fee program went into effect in 1994. The Bureau is responsible for protecting the state's surface and ground water resources. With the current level of staffing, the Bureau is unable to perform its core responsibilities:

-issuing permits in a timely manner,

-responding to citizen complaints about permitted facilities,

-conducting compliance monitoring activities,

-reviewing discharge monitoring data, and

-inspecting facilities.

In addition to permitting activities, these fees are also used to meet the Bureau's obligation to pay its share of costs for water quality standards development as well as enforcement, legal assistance, and administration.

Permits that are not renewed in a timely manner result in the loss of hundreds of thousands of dollars in grants and loans to Montana communities for upgrades to sewage treatment facilities. Delay in issuing new permits creates construction delays for both private and community wastewater systems. Failure to respond to citizen complaints in a timely manner has resulted in citizen lawsuits against both public and private permittees. Further, federal storm water regulation requires that states begin to regulate municipal storm water discharges by 2003. Failure to implement this program may result in further legal action or EPA-issued permits.

The Department has proposed to remedy this situation by increasing the Bureau's technical staff (three full-time employees [FTEs]) and support staff (one FTE). The 2001 Legislature approved the additional staff to address the permit backlog and other increased program demands identified in the preceding paragraph. Section 75-5-516, MCA, of the Montana Water Quality Act requires that the Board prescribe fees that are sufficient to cover the Board's and the Department's documented costs for reviewing and issuing permits, licenses, certifications, and other mandated activities such as inspections and monitoring. The Bureau's proposed budget was documented and approved by both executive and legislative branch oversight committees. For the past three years, revenue did not cover costs, but a previously existing account surplus made up the difference. The surplus is gone, and the program is now accumulating a deficit.

Comment No. 2: Five commentors stated that they did not have adequate time to assess economic impact due to the timing of the public notice (during the holiday season) or the short time frame of the comment period.

Response: The timing of the proposed fee rule is largely outside the control of both the Department and the Board; it

is established by the Montana Administrative Procedure Act (MAPA) and the executive branch budget process. Fee rules must be in place for February billing in order to generate revenue for the current fiscal year (July 1, 2001 to June 30, 2002).

The Department's timing was determined by several factors. First, the Department did not propose a fee increase until the budget surplus was eliminated. This occurs in the current fiscal year (FY02). Second, the Department's budget, approved by the 2001 Legislature, was not finalized until May 2001. At that time, the Department began overhauling the existing fee rule. Because the proposed rule change addresses both revenue generation and simplification of the fee structure, this process took several iterations and was completed in late August. Then the Department began meeting with affected parties representing both public and privately owned facilities. Fee notices were mailed out after the Board approved the Department's request to initiate rulemaking at its November 16 meeting. The rule package was mailed to 814 permittees, interested citizens, and other potential affected parties in early December. Because fees had to be calculated for each facility, this process took almost a week to develop and distribute.

Comment No. 3: Four commentors representing municipal governments or small businesses stated that the proposed fee increases occur in the middle of the fiscal year at a time when budgets have already been set. Several of these commentors requested that the fee increase be either reduced or phased in because of the significant amount of the increases.

Response: The Board recognizes that the proposed fee increase comes in the middle of the state fiscal year. As previously discussed, the revenue generated by this increase is used to fund program operations for the current fiscal year. Without a fee increase, the program could not meet its current fiscal year revenue needs and program obligations. Because of the timing of the increase, the Department has agreed to use its enforcement discretion to not impose penalties or enforcement actions against those small communities or businesses that did not submit the full amount by the 90-day deadline. The balance would have to be paid within 180 days.

Comment No. 4: Seven commentors did not specifically oppose the fee increase but indicated that the proposed increase was too high.

Response: The proposed fee rule is based on actual program expenditure, as approved by the Legislature. The Water Quality Act requires that fees be prescribed to cover actual program expenditures (75-5-516, MCA). The Board and Department have little discretion in setting the amount of revenue generated by the fee program. Their primary discretion

is how these fees are allocated among the permitted facilities.

Comment No. 5: Two commentors requested a fee waiver. Reasons cited for the waivers were:

-Some facilities are classified as inactive or abandoned mine sites and, therefore, are non-revenue generating;

-Some facilities are located within an Indian Reservation and are required to obtain an EPA-issued NPDES permit.

Response: The Water Quality Act requires that fees be collected from regulated facilities to cover the actual cost of administering the permit program. The cost of administering wastewater permits is the same for each of the facilities identified in the proposed rule whether or not they are operating or are required to hold additional permits. Reporting, monitoring, and inspection duties must still be performed by the Department for these facilities. The Department is working separately to resolve dual-permitting issues for facilities involving both state and EPA-issued permits.

Comment No. 6: One commentor objected to the fee distribution being shifted to the public utilities.

Response: In the past, the excess revenue generated from private facilities was used to subsidize public facilities. The proposed rule change attempts to match permit fees to the expenditure of Department revenue required to issue, maintain, and administer each permit type. In this proposal, privately owned treatment works will pay a higher rate per million gallons of effluent than publicly owned treatment works. The private systems will be billed at the statutory cap while the public systems remain below the maximum allowed by statute.

Comment No. 7: One commentor asked: If the permitting process had not been backlogged on the five-year renewals, would there be now a budget shortfall?

Response: The permit backlog is largely due to inadequate staffing in the Water Quality Discharge Permit Section where discharge permits are processed and administered. A backlog has existed since the early 1990s when nondegradation law changes significantly slowed the permit processing. While the backlog is steadily being addressed, it will not be significantly improved or eliminated without additional resources. The budget shortfall is a result of not collecting adequate funds to cover the cost of issuing and administering these permits. The Department did not propose to raise permit fees during the time when the program had annual budget surpluses. However, the Department did recognize the problem and sought additional staff to address it.

Comment No. 8: A commentor asked: Will these (new) employees be utilized only for determining Total Maximum Daily Loads (TMDLs) or will they be helping with the backlog of community discharge permits?

Response: All of the proposed employees will be located in the Water Protection Bureau in the permit section. Two of the positions will be responsible for permit writing, including municipal wastewater and storm water permits. One FTE is a support position for the permit section. The other position will be used to process other water quality licenses and certifications that are currently being handled by the permitting staff. This shift in duties will allow Department permit writers to focus on the permit backlog and issuance.

Comment No. 9: One commentor asked: If the new permitting schedule is approved, four FTEs are hired, and the Department catches up on its backlog, will there then be a budget surplus?

Response: A budget surplus is not expected, but if an excessive budget surplus were to develop, a fee reduction would be proposed. The Department believes that the proposed staff level is the minimum number necessary to reduce the permit backlog, issue new permits in a timely manner, and reissue permits prior to their expiration, as well as conduct other duties of the section. These other duties include inspections, enforcement, public involvement (such as hearings), and compliance and technical assistance to more than 800 permittees.

Comment No. 10: Two commentors asked if this rulemaking applies to coal bed methane facilities and the monitoring of them.

Response: This proposal applies to all types of existing and future permits administrated by the permit section of the Water Protection Bureau. Coal bed methane facilities are authorized to discharge and are monitored under either individual or general permits in the MPDES (Montana Pollutant Discharge Elimination System) program.

BOARD OF ENVIRONMENTAL REVIEW

By: *Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Reviewed by:

JAMES M. MADDEN
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State February 4, 2002.

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 ADOPTION AND AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

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

2. The Board has amended ARM 17.30.502, 17.30.602, 17.30.607 through 17.30.611, 17.30.621, 17.30.622, 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 exactly as proposed. The Board adopted new rule I (17.30.619) and amended ARM 17.30.623 through 17.30.629 as proposed, but with the following changes made in response to Comment No. 1 below:

New Rule I (17.30.619) INCORPORATIONS BY REFERENCE (1) and (1)(a) remain the same as proposed.

(b) the Water Quality Standards Handbook, Second Edition, ~~(US EPA, September 1993, EPA-823-B-93-002)~~ EPA-823-B-94-005a, August 1994 that sets forth procedures for development of site-specific criteria;

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

17.30.623 B-1 CLASSIFICATION STANDARDS (1) through (2)(i) remain the same as proposed.

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

(k) remains the same as proposed.

17.30.624 B-2 CLASSIFICATION STANDARDS (1) through (2)(i) remain the same as proposed.

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

(k) remains the same as proposed.

17.30.625 B-3 CLASSIFICATION STANDARDS (1) through (2)(i) remain the same as proposed.

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

(k) remains the same as proposed.

17.30.626 C-1 CLASSIFICATION STANDARDS (1) through (2)(i) remain the same as proposed.

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

(k) remains the same as proposed.

17.30.627 C-2 CLASSIFICATION STANDARDS (1) through (2)(i) remain the same as proposed.

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

(k) remains the same as proposed.

17.30.628 I CLASSIFICATION STANDARDS (1) through (2)(i) remain the same as proposed.

(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, September 1993)~~ EPA-823-B-94-005a, August 1994, and provided that other routes of exposure to toxic parameters by aquatic life are addressed. The 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.

(k) remains the same as proposed.

17.30.629 C-3 CLASSIFICATION STANDARDS (1) through (2)(i) remain the same as proposed.

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

(k) remains the same as proposed.

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

COMMENT NO. 1: One comment was received from Nathaniel J. Miullo, Chief of the Water Quality Unit, Region 8 of the United States EPA, stating that references to the Water Quality Standards Handbook were incorrect and provided the correct reference.

RESPONSE: The Board concurred and amended the rules as shown above to cite the correct edition of the Water Quality Standards Handbook.

COMMENT NO. 2: With regard to the chronic standard for hydrogen sulfide in WQB-7, there is a reference to footnote "(10)". However, this footnote refers to TCDD and not hydrogen sulfide. Obviously this is an error, and should be corrected. Thanks for the opportunity to review these standards.

RESPONSE: The Board agrees that the footnote does not apply to Hydrogen Sulfide and will be removed. No other footnote is needed.

COMMENT NO. 3: The proposed revision to Circular WQB-7, Montana Numeric Water Quality Standards, is the principal change proposed by the Board. EPA's review of the current version of WQB-7 (the September, 1999 version) identified errors in 62 of the numeric standards. These were, for the most part, calculation errors, and the EPA Region 8 and the Department of Environmental Quality (Department) staffs have worked together in resolving this problem. The proposed revision to WQB-7 will correct the calculation errors.

RESPONSE: Comment noted.

COMMENT NO. 4: The proposed revision to WQB-7 also includes changes based on updated and/or new EPA criteria recommendations. These are important changes, and they are consistent with EPA's expectation that States revise criteria values to be consistent with the most recently published EPA recommendations or State-derived, defensible alternatives. There are, however, two exceptions where the proposed revisions do not include criteria consistent with EPA's current recommendations. The exceptions are the human health criterion for mercury and the bacteriological criterion, E. coli (see comment 5).

EPA recently published an updated mercury criterion for the protection of human health that is expressed as a fish tissue concentration. This is a change from EPA's previous mercury criterion, which was based on a water column concentration. The mercury criterion in WQB-7 is based on the previously recommended water column concentration. In comments to the EPA Region 8, the Department staff has explained that the Department is not ready to recommend that the Board adopt the new tissue-based mercury criterion because EPA has yet to provide detailed implementation guidance. The EPA Region 8 agrees that implementation guidance is needed and that, for now, the 0.50 µg/l water column-based human health criterion in WQB-7 is acceptable. Once EPA has published suitable implementation guidance, however, we will expect the Board to revise WQB-7, adopting the new tissue-based criterion.

RESPONSE: The Board has considered the new EPA human health criteria for methylmercury and has decided to delay adoption of methylmercury standards until final EPA implementation guidance is available. The new water quality criteria for methylmercury is expressed as the concentration in fish tissue residue, which must then be translated to an equivalent concentration of total mercury or methylmercury in the water column. Guidance for making the necessary conversions is not available at this time. Guidance is also needed for application of the new criteria to MPDES permitting.

In addition, in the Federal Register announcement of the new methylmercury criteria (Volume 66, Number 5, pp. 1344-1359) the EPA acknowledges that "a fish tissue residue water quality criterion is new to States and authorized Tribes and will pose implementation challenges for traditional water quality standards programs." The notice also indicates that states may use a 5-year transition period during which guidance and implementation procedures will be developed.

COMMENT 5: EPA expects States to adopt EPA's recommended bacteriological criteria, based on E. coli, by no later than 2003. This includes adoption of geometric mean and single sample maxima criteria for all waters where recreational uses have been designated. In comments to the EPA Region 8, the

Department staff has explained that it is not prepared to make the change from fecal coliforms to E. coli at this time. Since EPA has given States until 2003 to make this change, a change to E. coli is not required during this current revision to WQB-7. However, the Board should be aware that EPA intends to initiate federal promulgation of the bacteriological criteria in 2003 where needed changes have not been made, and therefore, a revision to WQB-7 will be needed prior to that deadline.

RESPONSE: During this triennial standards review the Board and department did not propose to make the change from the present standards based on fecal coliforms to either E. coli and/or enterococci because additional data are required. Work by the department is in progress to collect and analyze the necessary data to develop the appropriate standard(s). The department expects that it will take one to two years to accomplish this.

COMMENT NO. 6: The hardness footnote in WQB-7, footnote 12, needs to be revised. Currently, footnote 12 appropriately indicates that certain aquatic life criteria for metals are expressed as a function of total hardness. The footnote further explains that the hardness values used in the calculation of the metals criteria will be limited to a range of 25 mg/l – 400 mg/l hardness. This hardness range limitation is consistent with EPA's previous recommendation for metals criteria implementation (and, this is the approach promulgated by EPA in the National Toxics Rule). Now, however, EPA recommends a hardness range of 0 – 400 mg/l in implementing the metals criteria. That is, EPA now recommends there be no lower "cap" to the hardness range. This revised recommendation is based on technical information provided by EPA's Office of Research and Development indicating that, in waters with a hardness below 25 mg/l, "capping" the hardness at 25 mg/l may result in under-protection of aquatic life uses. Accordingly, EPA has amended its previous recommendation, and footnote 12 should also be revised to reflect the new approach to implementing hardness-based aquatic life criteria for metals. This is the approach EPA applied in its recent promulgation of standards for the State of California.

RESPONSE: The Board has considered the comment and concluded that it is beyond the scope of rulemaking. Removing the present lower bound of 25 mg/l as $CaCO_3$ hardness for calculating the surface water acute and chronic aquatic life standard for certain metals would be making the standard more stringent. Because the recommended change was not publicly noticed potential affected parties have not had an opportunity to have their comments heard. The Board will consider this comment during its next triennial review of the surface water quality standards.

COMMENT NO. 7: The proposed revisions will update the reference to EPA's Water Quality Standards Handbook. This is

a useful revision in that the Handbook contains important program information, and its appendices include a number of key procedural documents. Unfortunately, the proposed reference is incorrect (this is an understandable error since EPA published two second editions with different dates). The reference should read: Water Quality Standards Handbook, Second Edition, EPA-823-B-94-005a, August 1994.

RESPONSE: The citation to EPA's Water Quality Standards Handbook will be corrected as suggested.

COMMENT NO. 8: The proposed revisions to the water quality standards include a number of general changes, such as amended classification language and segment boundary clarifications. These revisions will improve the water quality standards and are, accordingly, useful and acceptable.

RESPONSE: Comment noted.

COMMENT NO. 9: At the Board meeting to begin rulemaking a Board member recommended changing the parameter category term "toxin" to "toxic."

RESPONSE: The department agrees and will replace the term "toxin" with "toxic" in the WQB-7 parameter category.

COMMENT NO. 10 The EPA drinking water standard for Beta emitters no longer recommends using the effective dose equivalent (EDE) analysis method, therefore, the reference to EDE in WQB-7 should be removed to be consistent with present drinking water standards.

RESPONSE: The reference to EDE in WQB-7 (Beta emitters standard) will be removed because the EPA no longer recommends the effective dose equivalent (EDE) analysis method for Beta emitters.

BOARD OF ENVIRONMENTAL REVIEW

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

Reviewed by:

JAMES M. MADDEN
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, February 4, 2002.

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

In the matter of the transfer of ARM 8.10.101 through 8.10.1012 pertaining to the Board of Barbers	))))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Barbers is transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 120.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.10.101	24.120.101	Board Organization
8.10.201	24.120.201	Procedural Rules
8.10.202	24.120.202	Citizen Participation Rules
8.10.403	24.120.601	Examination
8.10.405	24.120.401	Fee Schedule
8.10.408	24.120.602	Application Requirements
8.10.409	24.120.2301	Unprofessional Conduct
8.10.410	24.120.603	Out-of-State Application
8.10.411	24.120.607	Temporary Practice Permit
8.10.412	24.120.608	Replacement Licenses
8.10.413	24.120.403	Compliance with Applicable Regulations
8.10.414	24.120.402	General Requirements
8.10.415	24.120.609	Posting of Licenses
8.10.416	24.120.404	Inspections
8.10.501	24.120.1001	Toilet Facilities
8.10.502	24.120.1002	Sink and Basin Requirements
8.10.503	24.120.1003	Towels and Linens
8.10.504	24.120.1010	Articles and Substances in Contact with a Client
8.10.505	24.120.1011	Waste Material
8.10.506	24.120.1012	Chemical Use, Storage and Disposal
8.10.507	24.120.1013	Serving Clients
8.10.508	24.120.1014	Disinfecting Requirements and Standards
8.10.509	24.120.1015	Variances
8.10.1011	24.120.801	School Requirements
8.10.1012	24.120.802	Instructor Training Requirements

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the

Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF BARBERS
DELORES LUND, CHAIRMAN

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

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, February 4, 2002.

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the transfer of ARM 8.20.101 through 8.20.504 pertaining to the Board of Hearing Aid Dispensers) NOTICE OF TRANSFER

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Hearing Aid Dispensers is transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 150.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.20.101	24.150.101	Board Organization
8.20.201	24.150.201	Procedural Rules
8.20.202	24.150.202	Citizen Participation Rules
8.20.417	24.150.301	Definitions
8.20.402	24.150.401	Fees
8.20.407	24.150.402	Record Retention
8.20.416	24.150.403	Notification
8.20.403	24.150.501	Examination - Pass/Fail Point
8.20.412	24.150.502	Minimum Testing and Recording Procedures
8.20.401	24.150.503	Traineeship Requirements and Standards
8.20.420	24.150.504	Licensees from Other States
8.20.419	24.150.505	Inactive Status
8.20.418	24.150.510	Transactional Document Requirements - Form and Content
8.20.404	24.150.2101	Renewals
8.20.501	24.150.2201	Continuing Educational Requirements
8.20.502	24.150.2204	Standards for Approval
8.20.503	24.150.2202	Exceptions
8.20.504	24.150.2203	Proof of Attendance
8.20.408	24.150.2301	Unprofessional Conduct

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF HEARING AID DISPENSERS
DAVID KING, CHAIRMAN

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

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, January 31, 2002.

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 IV and the amendment of ARM 37.8.101, 37.8.103 through 37.8.106, 37.8.109 and 37.8.110, 37.8.116, 37.8.126, 37.8.301 through 37.8.303, 37.8.310, 37.8.601, 37.8.801 and 37.8.802, 37.8.804 and 37.8.816 and the repeal of 37.8.309 and 37.8.602 pertaining to vital statistics	))))))))))))	NOTICE OF ADOPTION, AMENDMENT AND REPEAL

TO: All Interested Persons

1. On December 6, 2001, the Department of Public Health and Human Services published notice of the proposed adoption, amendment and repeal of the above-stated rules at page 2373 of the 2001 Montana Administrative Register, issue number 23.

2. The Department has adopted the rules I [37.8.102], II [37.8.127], III [37.8.128] and IV [37.8.129] as proposed.

3. The Department has amended rules ARM 37.8.101, 37.8.103 through 37.8.106, 37.8.109 and 37.8.110, 37.8.116, 37.8.126, 37.8.301 through 37.8.303, 37.8.310, 37.8.601, 37.8.801 and 37.8.802, 37.8.804 and 37.8.816 and repealed rules ARM 37.8.309 and 37.8.602 as proposed.

4. The effective date of the amendment of ARM 37.8.116 which sets the fees for vital records services, is April 1, 2002.

5. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State February 4, 2002.

**BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA**

In the Matter of the Adoption of a Rule Pertaining to Electronic Filings	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On August 23, 2001, the Department of Public Service Regulation, Public Service Commission (PSC) published notice of public hearing on the proposed adoption of new Rule I concerning electronic filings, at page 1582 of the 2001 Montana Administrative Register, issue number 16.

2. The PSC has adopted new Rule I with the following changes, stricken matter interlined, new matter underlined:

RULE I. (38.2.318) ELECTRONIC COPY OF FILINGS (1) All ~~papers, including pleadings initiating the proceeding and all thereafter,~~ documents filed with the commission by any party to a proceeding which pertains to an application by any energy utility, including energy transportation and distribution providers, any telecommunications utility, or any water or sewer utility serving more than 5,000 customers, to establish, modify, or abolish tariffed rates or operating rules must, in addition to the paper original and copies required by commission rules, policies, or orders, be accompanied by an electronic copy at the time of filing, except as provided in (3).

(2) The electronic copy must be filed on a floppy disk (3 1/2 inch, MS-DOS format) or compact disc and must be a single file in Aadobe~~,~~ Pportable Ddocument Fformat (~~PDF~~ pdf) format (see www.adobe.com). The first digital pages of the single-file electronic copy must be ~~an index~~ a table of contents, by heading and subheading and, when testimony is included, by witness identification, referencing to ~~PDF~~ pdf background page numbers. Except for the ~~index~~ table of contents with its reference to ~~PDF~~ pdf background page numbers, the electronic copy must be identical to the paper original which it represents. The floppy disk and compact disk must be labeled. The label must include the PSC docket number, the case title (abbreviated), the name of party responsible for the filing, an identity of what the electronic copy represents, and the date of filing.

(3) The following are not subject to this electronic copy requirement unless the commission otherwise orders:

(a) ~~Documents~~ documents which have been designated trade secret or have been otherwise protected from public disclosure by action of the commission ~~are not subject to the electronic copy requirement. The~~ , except nonproprietary summaries of such documents are subject to the electronic filing requirement~~.~~;

(b) documents submitted for the first time (not prefiled) at hearing in the proceeding; and

(c) documents which are public comments.

(4) A party may apply to the commission for waiver of this rule in regard to documents which conversion to electronic format is impractical. A party, except a utility or frequent intervenor in commission proceedings, may apply to the commission for waiver of this rule if the party does not have or have reasonable access to equipment and software allowing compliance with this rule. Utilities and frequent intervenors in proceedings before the commission are required to have or make arrangements for reasonable access to equipment and software allowing compliance with this rule.

(5) When service of a document filed with the commission is required by commission rule, policy, order, or the like, the electronic copy of the document must also be served.

(6) For purposes of this rule the following definitions apply:

(a) "document" means pre-pleading motions, pleadings, applications, petitions, cover letters, transmittal letters, proposed notices, prefiled testimony, exhibits, work papers, data requests and other discovery and responses to those, and all other written submissions of any kind;

(b) "party" means the applicant (or petitioner) and intervenors applying for or having obtained formal party status in a proceeding to which this rule applies.

(7) This rule is effective on and after August 5, 2002.

AUTH: 69-1-110, 69-2-101, 69-3-103, MCA
IMP: 69-1-110, 69-2-101, 69-3-103, MCA

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

Comments on the rule were received from Montana Independent Telecommunications Systems (MITS), WorldCom, Inc. (WorldCom), AT&T Communications of the Mountain States, Inc. (AT&T), and Qwest Corporation (Qwest). The comments were written, oral, or both. All commenting seem to favor the general idea of electronic filings, but not in the fashion envisioned in the PSC's proposed rule.

COMMENT 1: MITS comments the proposed rule stops short of providing electronic access to the information and therefore benefits the PSC but not the public. MITS comments that electronic access would enable the public to better monitor proceedings and the status of proceedings and make better informed decisions about the proceedings. MITS suggests the PSC amend the rule to include that all electronic documents received by the PSC in a proceeding and all documents internally generated and distributed to the commissioners regarding the proceeding be posted on the PSC's web site daily or within one week of filing or distribution.

RESPONSE: The PSC agrees in concept with the public access comments, but is not yet ready to implement a web access to filings. Eventually such access might be implemented. Public access to electronic documents generated by the PSC is an issue

separate from this rule.

COMMENT 2: MITS comments that the rule may have the unintended effect of limiting small business and public participation because some do not have electronic capabilities or know how to file electronically. MITS suggests the rule clearly distinguish between full-fledged parties and the general public for mandatory electronic filing requirements.

RESPONSE: The electronic filing requirement applies only to parties in a PSC proceeding. The rule has been clarified regarding this and to allow for a waiver to address the concern about a party not having electronic capabilities. A PSC electronic filing procedure is available for non-party, public comments in a number of types of PSC proceedings, if the public wants to use it.

COMMENT 3: WorldCom comments that an electronic filing process should streamline procedures for all involved, not just add another layer of procedural activity. AT&T suggests the PSC consider whether the number of hard copies required could be reduced when there is an electronic copy.

RESPONSE: The initial benefits of the electronic copy requirement (the other layer of procedural activity) might primarily flow to the PSC. Eventually the process will be streamlined, if possible, and more benefits will flow to those participating before the PSC and those interested in PSC activities. Reduction in the number of hard copies is a benefit to participants that might be allowed in the future.

COMMENT 4: WorldCom suggests the PSC might want to experiment with electronic filings before adopting any rule. Qwest suggests an informal process to develop a consensus regarding electronic filings.

RESPONSE: In a sense the rule is an "experiment" already. The PSC is well aware of important things about the electronic copy requirement, but there are things the PSC needs to learn about electronic filings and those things can only be learned in a meaningful manner through a first formal step. The PSC anticipates the rule will require some fine tuning as experience is gained.

COMMENT 5: WorldCom comments that filings should be allowed in a variety of formats (e.g., Word, WordPerfect) rather than the mandated Adobe. AT&T comments that the required Adobe format requires a great deal of storage and other resources, including e-mailing time, is normally not searchable, and the PSC should consider alternatives such as Word or WordPerfect. Qwest opposes the restriction to Adobe because Adobe files cannot be manipulated and some parties may not have Adobe capabilities. Qwest comments that the rule's "papers" (thing filed) is not defined, and many "papers" are not in electronic format, such as discovery responses with exhibits.

RESPONSE: Consistency is the objective of mandating Adobe. Adobe produces a uniform exact copy of the document to all who

view it or print it. Other formats will produce various versions depending on the software and printer used. Also the PSC does not have the capability to open some electronic document formats. Adobe is searchable, if done the correct way (a distiller is involved). The manipulation problem can be solved by parties amicably providing the information in another format upon request (as done now). Regarding a definition of the rule's "papers" the PSC agrees and amends the rule accordingly.

COMMENT 6: WorldCom questions the need for the index, which will require additional effort on the part of participants, and does not see the manner in which the index will be necessary, as there is no indication the filing will be posted on a web site or otherwise made available to the public or parties. AT&T suggests the index requirement, which is only necessary when there is no search capabilities, will be unwieldy and burdensome.

RESPONSE: The PSC agrees, but will require a table of contents. The rule is amended accordingly.

COMMENT 7: WorldCom comments that some documents may not lend themselves to electronic formatting, particularly Adobe, and it might be better if voluminous filings or parts of filings remain hard copy only.

RESPONSE: Regarding some documents not lending themselves to electronic formatting, the PSC agrees in part and amends the rule to allow a request for waiver of the electronic copy requirement.

COMMENT 8: WorldCom suggests, for efficiency and smooth flow of information, the PSC accept the electronic filings as an e-mail attachment, rather than mandate disk copies. Qwest suggests that e-mail service and filing be allowed, as that may be where the greatest efficiencies of this rule could be. AT&T also suggests the PSC allow for e-mail filings.

RESPONSE: The state e-mail system has a size limit for incoming e-mails. This would preclude most major e-mail filings. Also, administratively, e-mail filings present serious administrative problems regarding joining, connecting, matching the e-version to the paper version. For now the hard copy and electronic documents need to be filed at the same time, in one packet. Eventually there may be options, such as web uploading, which might allow a manageable equivalent to e-mail filings.

COMMENT 9: AT&T recommends the PSC include naming conventions (e.g., party name, docket, title of document, date filed) for electronic files. AT&T recommends there be a labeling requirement for disks and cds.

RESPONSE: The PSC agrees and amends the rule accordingly.

COMMENT 10: Qwest comments that any electronic version of a filing must be served on parties too.

RESPONSE: Regarding electronic versions of a filing being

served on parties, the PSC agrees and amends the rule accordingly.

/s/ Gary Feland
Gary Feland, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 4, 2002.

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the amendment and transfer of ARM 42.26.221, (42.26.307), 42.26.266 (42.26.603), and 42.26.267 (42.26.604) relating to corporation license tax	CORRECTED NOTICE OF AMENDMENT AND TRANSFER

TO: All Concerned Persons:

1. On December 20, 2001, the Department published a notice at page 2469 of the 2001 Montana Administrative Register, Issue No. 24, of the transfer of ARM 42.26.221 to (42.26.307); 42.26.266 (42.26.603); and 42.26.267 (42.26.604) relating to corporation license taxes.

2. The reason for the correction is that the proposal notice as found in 2001 Montana Administrative Register, Issue No. 20, dated October 25, 2001, at pages 2111 and 2115 indicated the rules were only being transferred. When in fact, since the implementation cites were being amended to more accurately reflect the pertinent cites to the rules rather than the entire chapter and part, the rules were also being amended. This notice corrects that error.

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on December 31, 2001.

4. An electronic copy of this Correction 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 Correction 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 February 4, 2002

VOLUME NO. 49 OPINION NO. 17

COUNTIES – Criteria for redrawing commissioner districts;
COUNTIES – Redrawing commissioner districts following each federal decennial census;
COUNTY COMMISSIONERS – Residency requirements of candidates;
STATUTORY CONSTRUCTION – Plain language of statute;
MONTANA CODE ANNOTATED – Sections 1-4-101, 7-4-2102, -2104;
MONTANA CONSTITUTION – Article V, section 4;
OPINIONS OF THE ATTORNEY GENERAL – 41 Op. Att'y Gen. No. 44 (1986).

HELD: The two-year residency requirement contained in Mont. Code Ann. § 7-4-2104(2) does not disqualify from standing for election a person who was transferred into a county commission district by virtue of reapportionment conducted pursuant to Mont. Code Ann. § 7-4-2102, as long as the person has resided at the same address, now in the new district, for the requisite two-year period.

January 28, 2002

Mr. Brant S. Light
Cascade County Attorney
121 Fourth Street North
Great Falls, MT 59401

Dear Mr. Light:

Your letter indicates that the Board of Commissioners of Cascade County has mandated that an advisory committee redraw the county commission districts in accordance with Mont. Code Ann. § 7-4-2102. You indicate that the advisory committee will recommend that the district lines be redrawn. As a result of this proposed reapportionment, you have requested my opinion concerning the following issue:

> **Does the two-year residency requirement of Mont. Code Ann. § 7-4-2104(2) disqualify from standing for election a person who was transferred into a county commission district by virtue of reapportionment conducted pursuant to Mont. Code Ann. § 7-4-2102?**

Montana law requires that all boards of county commissioners in the state divide their respective counties into three commissioner districts following each federal decennial census. Mont. Code Ann. § 7-4-2102(1). The three districts must be "as compact and equal in population and area as possible." Id. The law further provides that no commissioner district shall at any time be changed to affect the term of office of any county commissioner who has been elected. Id.

The law as drafted is straightforward in requiring persons to reside in their commissioner district for at least two years before the election:

> A person may not be elected as a member of a board of county commissioners unless the person has resided in the county and the district for at least 2 years preceding the general election.

Mont. Code Ann. § 7-4-2102(2). The law fails to address, however, the situation of a person seeking to run for election as a new candidate or to stand for reelection, whose district has changed as a result of mandated redistricting.

In Barthelmess v. Bergerson, 218 Mont. 398, 708 P.2d 1010 (1985), the court faced the question, among others, of whether Mont. Code Ann. § 7-4-2104(2) prevents a sitting board member who was moved out of a commissioner district by reapportionment from running for the board in the board member's former commissioner district. Plaintiff Barthelmess originally resided in Custer County commissioner district number 2. Barthelmess, 218 Mont. at 400. The redistricting undertaken by the Board of County Commissioners for Custer County in 1983, however, moved Mr. Barthelmess's residence into commissioner district number 3. Id. Despite this change, Mr. Barthelmess ran and was elected in 1984 to serve as commissioner for his former district--district number 2. Id.

After the election, a voter challenged Mr. Barthelmess's qualification to serve on the board as the commissioner for district number 2 on the ground that Mr. Barthelmess no longer resided in the district. Id. The court found the language of Mont. Code Ann. § 7-4-2104(2) regarding the two-year residency requirement to be "clear and unambiguous." Barthelmess, 218 Mont. at 403. As Mr. Barthelmess did not reside in the commissioner district from which he ran and was elected, he could not serve based on the two-year residency requirement of Mont. Code Ann. § 7-4-2104(2). Cf. Mont. Const. art. V, § 4 (requiring a candidate for the Montana legislature to be a resident for six months before the general election of the county if it contains one or more districts or of the district if it contains all or parts of more than one county).

Although similar reasoning applies to your question, a different outcome results. Mont. Code Ann. § 7-4-2104(2) requires a person to reside in the commissioner district for two years preceding the election. In Barthelmess, Mr. Barthelmess lived at his same address during the entire period in question. Barthelmess, 218 Mont. at 400. He ran as a candidate in his former commissioner district despite the fact that he no longer resided in that commissioner district. Id. Mr. Barthelmess could not satisfy the two-year residency requirement of Mont. Code Ann. § 7-4-2104(2), due to the fact that he no longer

resided in the commissioner district to which he was elected. The Court never addressed the issue of whether Mr. Barthelmess could have been a candidate from his newly drawn commissioner district--district 3.

As I understand your question, the person at issue also has lived at the same address for some period. Your question asks, however, whether the person would be eligible to run for election in the newly drawn district--the district in which he now resides. The fact that redistricting following the federal decennial census created the district, and the fact that the person has resided at the same address for at least two years leads me to conclude that he satisfies the two-year residency requirement contained in Mont. Code Ann. § 7-4-2104(2).

To hold otherwise would lead to the situation of a person being ineligible to be a candidate in any commissioner district for up to two years following the redistricting, despite the fact that the person may have resided at the same address for many years. My conclusion in 41 Op. Att'y Gen. No. 44 (1986) (holding that county adopting charter form of government may allow for incumbent county commissioners to retain their seats even if the new plan alters the district boundaries to the point that the "holdover" commissioners no longer reside in the district that they represent) is not in conflict.

THEREFORE, IT IS MY OPINION:

> The two-year residency requirement contained in Mont. Code Ann. § 7-4-2104(2) does not disqualify from standing for election a person who was transferred into a county commission district by virtue of reapportionment conducted pursuant to Mont. Code Ann. § 7-4-2102, as long as the person has resided at the same address, now in the new district, for the requisite two-year period.

Very truly yours,

/s/ Mike McGrath

MIKE McGRATH
Attorney General

mm/bm/dm

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the petition for declaratory ruling on the issue of whether the act of administering and monitoring a patient during IV conscious sedation is within the scope of practice of a respiratory care practitioner	)))))))	NOTICE OF PETITION FOR DECLARATORY RULING

TO: All Concerned Persons

1. On March 19, 2002 at 10:00 a.m. in conference room 471 of the Business Standards Division, Department of Labor and Industry, 301 South Park Avenue, Helena, Montana, the Board of Respiratory Care Practitioners will consider a petition for declaratory ruling on whether the act of administering intravenous (IV) conscious sedation is within the scope of practice of a respiratory care practitioner.

2. This petition for declaratory ruling is submitted at the request of Jill Caldwell, Nursing Practice Manager, Montana Board of Nursing, P.O. Box 200513, Helena, MT 59620-0513.

3. Petitioner alleges that it is not within the scope of respiratory care practitioners to administer intravenous conscious sedation to patients.

4. The statute upon which the declaratory ruling is requested is 37-28-102(3), MCA. The scope of a respiratory care practitioner is set forth therein and provides as follows:

37-28-102 MCA DEFINITIONS

(3)(a) "Respiratory care" means the care provided by a member of the allied health profession responsible for the treatment, management, diagnostic testing, and control of patients with deficiencies and abnormalities associated with the cardiopulmonary system. The term includes but is not limited to:

(i) administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures that are necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a physician;

(ii) transcription and implementation of the written or verbal orders of a physician regarding the practice of respiratory care;

(iii) observation and monitoring of a patient's signs and symptoms, general behavior, and physical response to respiratory care treatment and diagnostic testing, including determination of abnormal characteristics;

(iv) implementation of respiratory care protocols pursuant to a prescription by a physician; and

(v) initiation of emergency procedures prescribed by board rules.

5. Petitioner requests that the Board of Respiratory Care Practitioners issue a declaratory ruling that respiratory care practitioners may not administer intravenous conscious sedation and monitor a patient during IV conscious sedation within the scope of the respiratory care practitioners.

6. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

7. The petitioner and the Board of Nursing identified the following as interested persons:

Char Christiaens RN	The Montana Board of Nursing
Benefis Health Care	301 South Park Avenue
1101 26th St. South	P.O. Box 200513
Great Falls, MT 59405	Helena, MT 59620-0513

8. Other 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 the Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, e-mail dlibsdrcp@state.mt.us to be received no later than 5:00 p.m. March 19, 2002.

9. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m on March 14, 2002, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, program manager, Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305, e-mail dlibsdrcp@state.mt.us.

BOARD OF RESPIRATORY CARE PRACTITIONERS
DR. GREGORY PAULAUSKIS, PHD, RRT, RCP
CHAIRMAN

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

Certified to the Secretary of State, February 4, 2002.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- **Department of Public Health and Human Services.**

Law and Justice Interim Committee:

- **Department of Corrections; and**
- **Department of Justice.**

Revenue and Transportation Interim Committee:

- **Department of Revenue; and**

- Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2001. This table includes those rules adopted during the period October 1, 2001 through December 31, 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 September 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, 2001 and 2002 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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