

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING ON
of New Rule I pertaining to)	PROPOSED ADOPTION AND
standards for electrical)	AMENDMENT
conductivity and sodium)	
adsorption ratio and the)	
amendment of ARM 17.30.602)	(WATER QUALITY)
pertaining to definitions for)	
water quality standards)	

TO: All Concerned Persons

1. On September 26, 2002 at 9:30 a.m., the Board of Environmental Review will hold public hearings at Miles Community College, Main Building, Rooms 106, 107, and 108, 2715 Dickinson, Miles City, Montana, and on September 27, 2002, at 9:30 a.m. in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in these public hearings or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., September 16, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386 or email ber@state.mt.us.

3. The proposed new rule provides as follows:

RULE I NUMERIC STANDARDS FOR ELECTRICAL CONDUCTIVITY (EC) AND SODIUM ADSORPTION RATIO (SAR) (1) No person may violate the numeric water quality standards identified in (3) through (6). These numeric water quality standards for EC and SAR are instantaneous maxima and may not be exceeded.

(2) EC and SAR are harmful parameters for the purposes of the Montana Water Quality Act, Title 75, chapter 5, MCA.

(3) The numeric standards for EC and SAR for Rosebud Creek are as follows:

(a) for the mainstem of Rosebud Creek from its confluence with the Yellowstone River to the Highway 39 crossing south of Colstrip, the numeric water quality standard for EC is 1700 µS/cm and the numeric water quality standard for SAR is 3.0;

(b) for the mainstem of Rosebud Creek from the Highway 39 crossing south of Colstrip to Kirby, the numeric water quality standard for EC is 1300 µS/cm and the numeric water quality standard for SAR is 1.5; and

(c) for the mainstem of Rosebud Creek from Kirby to its headwaters, the numeric water quality standard for EC is 700 $\mu\text{S}/\text{cm}$ and the numeric water quality standard for SAR is 1.0.

(4) The numeric standards for EC and SAR for the Tongue River are as follows:

(a) for the mainstem of the Tongue River from its confluence with the Yellowstone River to the Tongue River Reservoir Dam, the numeric water quality standard for EC and SAR are as follows:

(i) from April 1 through October 31, the numeric water quality standard for EC is 1000 $\mu\text{S}/\text{cm}$ and the numeric water quality standard for SAR is 1.6; and

(ii) from November 1 through March 31, the numeric water quality standard for EC is 1200 $\mu\text{S}/\text{cm}$ and the numeric water quality standard for SAR is 2.5;

(b) for the Tongue River Reservoir, the numeric water quality standard for EC is 800 $\mu\text{S}/\text{cm}$ and the numeric water quality standard for SAR is 1.0; and

(c) for the mainstem of the Tongue River from the inlet to the Tongue River Reservoir to the most upstream crossing of the Montana-Wyoming boundary, the numeric water quality standard for EC is 600 $\mu\text{S}/\text{cm}$ and the numeric water quality standard for SAR is 0.50.

(5) The numeric standards for EC and SAR for the Powder River are as follows:

(a) for the mainstem of the Powder River from its confluence with the Yellowstone River to Moorehead, the numeric water quality standards for EC and SAR are as follows:

(i) from April 15 through July 15, the numeric water quality standard for EC is 1600 $\mu\text{S}/\text{cm}$ and the numeric water quality standard for SAR is 4.0;

(ii) from July 16 through September 1, the numeric water quality standard for EC is 2400 $\mu\text{S}/\text{cm}$ and the numeric water quality standard for SAR is 5.0; and

(iii) from September 2 through April 14, the numeric water quality standard for EC is 3200 $\mu\text{S}/\text{cm}$ and the numeric water quality standard for SAR is 6.0;

(b) for the mainstem of the Powder River from Moorehead to the Montana-Wyoming boundary, the numeric water quality standards for EC and SAR are as follows:

(i) from April 15 through July 15, the numeric water quality standard for EC is 1400 $\mu\text{S}/\text{cm}$ and the numeric water quality standard for SAR is 4.0;

(ii) from July 16 through September 1, the numeric water quality standard for EC is 2200 $\mu\text{S}/\text{cm}$ and the numeric water quality standard for SAR is 5.0; and

(iii) from September 2 through April 14, the numeric water quality standard for EC is 3000 $\mu\text{S}/\text{cm}$ and the numeric water quality standard for SAR is 6.0.

(6) The numeric standards for EC and SAR for the Little Powder River from its confluence with the Powder River to the Montana-Wyoming boundary are as follows:

(a) from April 15 through July 15, the numeric water quality standard for EC is 2000 $\mu\text{S}/\text{cm}$ and the numeric water quality standard for SAR is 5.0;

(b) from July 16 through September 1, the numeric water quality standard for EC is 2400 $\mu\text{S}/\text{cm}$ and the numeric water quality standard for SAR is 6.0; and

(c) from September 2 through April 14, the numeric water quality standard for EC is 3000 $\mu\text{S}/\text{cm}$ and the numeric water quality standard for SAR is 8.0.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

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

17.30.602 DEFINITIONS (1) through (8) remain the same.

(9) "Electrical conductivity (EC)" means the ability of water to conduct an electrical current at 25° C. The electrical conductivity of water represents the amount of total dissolved salts in the water and is expressed as microSiemens/centimeter ($\mu\text{S}/\text{cm}$) or micromhos/centimeter ($\mu\text{mhos}/\text{cm}$) or equivalent units and is corrected to 25° C.

(9) through (24) remain the same, but are renumbered (10) through (25).

(26) "Sodium adsorption ratio (SAR)" means a value representing the relative amount of sodium ions to the combined amount of calcium and magnesium ions in water using the following formula: $\text{SAR} = [\text{Na}] / (([\text{Ca}] + [\text{Mg}]) / 2)^{1/2}$, where all concentrations are expressed as milliequivalents of charge per liter.

(26) through (31) remain the same but are renumbered (27) through (32).

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: Why Numeric Standards Are Necessary

The Board is proposing the adoption of New Rule I and the amendment of ARM 17.30.602 in response to a petition filed by Tongue River Water Users Association, Tongue & Yellowstone Irrigation District, Buffalo Rapids Irrigation Project, and Northern Plains Resource Council (collectively "Petitioners") requesting the Board to adopt numeric water quality standards for EC and SAR. The Petitioners are requesting the adoption of numeric standards for EC and SAR in order to ensure that all designated and existing uses of water bodies will be protected during the development of coal bed methane (CBM) currently being proposed in Montana and taking place in Wyoming.

The Petitioners' reasons for adopting numeric standards for EC and SAR (rather than rely on the existing narrative

standard for these parameters) are stated in the petition and are summarized as follows:

1. Numeric standards are easier to enforce than the existing narrative standard and will provide the regulated community with greater certainty in the MPDES permitting process. For example, numeric standards will eliminate the need for individual DEQ staff interpretation of narrative standards that can result in one discharger being subject to more restrictive permit conditions than others.

2. Numeric standards will ensure that impacts to agriculture, other beneficial uses of surface waters, and the coal bed methane industry can be assessed in advance. The methane industry will know the rules up front.

3. The proposed numeric standards will ensure that water quality permitting decisions are based on the best available science.

4. The proposed numeric standards will ensure that the assimilative capacity of Montana's waters can be equitably distributed among all users, and ensure that coal bed methane development in Wyoming does not preclude development in Montana.

5. The proposed numeric standards allow for the site-specific conditions of each watershed to be taken into account when establishing pollution limits for methane wastewater discharges.

Scientific Rationale for the Proposed Standards

The site-specific numeric water quality standards being proposed were developed to meet the following objectives. The standards will:

1. Protect all existing and anticipated beneficial uses of the watersheds.

2. Protect the most susceptible soils of each watershed and ensure no reduction of infiltration of the most susceptible soils.

3. Protect the most susceptible crops, and protect native riparian and upland vegetation.

4. Include an adequate margin of safety to address the scientific uncertainties inherent in developing standards to protect beneficial uses.

5. Adopt a precautionary approach that protects irrigators first and foremost.

6. Ensure that irrigators are not required to change their way of life and ensure that farmers and ranchers are not required to change current irrigation practices and are not required to implement new soil management practices, such as adding gypsum to soils, to mitigate the impacts of methane wastewater discharges on soils.

7. Ensure that costs of coal bed methane development are not shifted to the agricultural community through decreases in crop yields or the elimination of future crop options.

8. Ensure there is no loss of soil and crop productivity in the watersheds.

Why Two Different Irrigation Season Standards for the Powder and Little Powder River Basins are Necessary

The amount of irrigation in the Powder River and Little Powder River watersheds is currently limited by the lack of available water. Consequently, irrigators must use the water when the water is available, which is usually between April 15 and July 15, when water quality is significantly better than average conditions. Consequently, average ambient water quality levels do not reflect the quality of water used for irrigation in these watersheds. The irrigation season standards are designed to ensure this high quality water during the critical period is preserved for irrigation use.

Why Reach-Specific Standards are Necessary

The Petitioners are requesting a site-specific approach that requires the adoption of reach-specific standards for EC and SAR. According to the petition, this site-specific approach is necessary to accommodate the gradual downstream increase in salinity and SAR that occurs naturally. This site-specific approach is also necessary to protect existing and anticipated beneficial uses while equitably allocating any available assimilative capacity along the length of the river. If a site-specific approach is not taken, the most upstream user, in this case the State of Wyoming, will discharge pollutants until the ambient water quality reaches the standard. This pollution will prevent any downstream development, in this case methane development in the State of Montana.

Why Stringent Non-Irrigation Season Standards are Necessary

As a water table fluctuates over the season, water infiltrates into the banks. High SAR and EC water infiltrating into the banks may interact with water in the channel during the irrigation season and cause increases in SAR and EC levels in-stream. Ice damming can flood fields adjacent to the channel during the winter and this possibility requires stringent SAR and EC standards year round.

Rationale for Establishing the Proposed Standards at Levels that Protect the Most Susceptible Soils and the Most Susceptible Crops

Establishing specific water quality standards for EC and SAR is complicated by the fact that waters of unique or regulated characteristics cannot be partitioned within the irrigation systems or stream channels once water enters the channel. Within a defined irrigation management system, each management unit is intimately connected by means of the water distribution system. Once water enters the distribution system, the entire system and all associated land parcels are subject to the same water quality conditions. Since waters in

the irrigation system cannot be segregated and delivered according to each parcel's soil characteristics, irrigation system, and plant/crop selection, numeric standards must be established at a level that will protect the most susceptible soils and the most susceptible crops within the irrigation distribution system.

Designating a specific water quality standard for SAR is further complicated by the fact that individual soil series are seldom unique and isolated, but may be comprised of as many as 3 to 6 different soil materials. For instance, the predominant soil associations likely to be irrigated by water during coalbed methane production found within the watersheds of concern are: Kyle-Lohmiller-Haverson (silty clay, silty clay loam, fine sandy loam, silt loam) and Korchea-Farnuf-Savage (loam, silt loam, silty clay loam), Haverson-Havre (silt loam, silty clay loam, clay loam), and Yamac-Harlem (silty clay-clay loam), among others.

The complexity and diversity of soil series within the watersheds of concern necessitates that EC and SAR water quality standards protect the most sensitive or susceptible soil. The most "sensitive" soils for which protective standards must be established within the watersheds are montmorillonite-based, fine-textured soils predominating the ephemeral and perennial stream channels, flood plains, terrace, and alluvial fans of the Tongue River, Rosebud Creek, the Powder and Little Powder Rivers, and their tributaries.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us and must be received no later than 5:00 p.m., October 3, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

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.
Chairman

Reviewed by:

John F. North
JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State, August 19, 2002.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING ON
of New Rules I through III,)	PROPOSED ADOPTION AND
pertaining to standards for)	AMENDMENT
electrical conductivity and)	
sodium adsorption ratio and)	
classifications for)	(WATER QUALITY)
constructed coal bed methane)	
water holding ponds, and the)	
amendment of ARM 17.30.602 and)	
17.30.715 pertaining to)	
definitions for water quality)	
standards and nonsignificance)	
criteria)	

TO: All Concerned Persons

1. On September 26, 2002 at 9:30 a.m., the Board of Environmental Review will hold public hearings at Miles Community College, Main Building, Rooms 106, 107, and 108, 2715 Dickinson, Miles City, Montana, and on September 27, 2002, at 9:30 a.m. in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in these public hearings or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., September 16, 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 NUMERIC STANDARDS FOR ELECTRICAL CONDUCTIVITY (EC) AND SODIUM ADSORPTION RATIO (SAR) (1) No person may violate the numeric water quality standards identified below.

(2) Except as provided in (7) and in [New Rule III], the numeric standards for EC and SAR for Rosebud Creek, the Tongue, Powder, and Little Powder river watersheds from November 1 through March 31 are as follows:

(a) the numeric water quality standard for EC is 2000 µS/cm [or an alternative value in the range of 1000 through 2500 µS/cm]; and

(b) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., SAR = (EC x 0.0071) - 2.475) [or adopt a different equation that

quantifies the relationship between EC and SAR limiting values of SAR to a range of 1 through 10].

(3) Except as provided in (7) and in [New Rule III], the numeric standards for EC and SAR for the Tongue River watershed from April 1 through October 31 are as follows:

(a) for the mainstem of the Tongue River and the Tongue River Reservoir:

(i) the numeric water quality standard for EC is 1000 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 750 through 2000 $\mu\text{S}/\text{cm}$]; and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation that quantifies the relationship between SAR and EC limiting the value of SAR to a range of 2 through 10].

(b) for all other tributaries and surface waters in the Tongue River watershed:

(i) the numeric water quality standard for EC is 500 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 350 through 600 $\mu\text{S}/\text{cm}$]; and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation that quantifies the relationship between SAR and EC limiting the value of SAR to a range of 2 through 10].

(4) Except as provided in (7) and in [New Rule III], the numeric standards for EC and SAR for the Rosebud Creek watershed from April 1 through October 31 are as follows:

(a) for the mainstem of Rosebud Creek:

(i) the numeric water quality standard for EC is 1000 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 1000 through 2500 $\mu\text{S}/\text{cm}$]; and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation limiting the value of SAR to a range of 2 through 10].

(b) for all other tributaries and surface waters in the Rosebud Creek watershed:

(i) the numeric water quality standard for EC is 500 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 350 through 600 $\mu\text{S}/\text{cm}$]; and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation limiting the value of SAR to a range of 2 through 10].

(5) Except as provided in (7) and in [New Rule III], the numeric standards for EC and SAR for the Powder River watershed from April 1 through October 31 are as follows:

(a) for the mainstem of the Powder River:

(i) the numeric water quality standard for EC is 1900 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 1000 through 2000 $\mu\text{S}/\text{cm}$]; and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation limiting the value of SAR to a range of 2 through 10].

(b) for all other tributaries and surface waters in the Powder River watershed except for the Little Powder River:

(i) the numeric water quality standard for EC is 500 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 350 through 600 $\mu\text{S}/\text{cm}$]; and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation limiting the value of SAR to a range of 2 through 10].

(6) Except as provided in (7) and in [New Rule III], the numeric standards for EC and SAR for the Little Powder River watershed from April 1 through October 31 are as follows:

(a) for the Little Powder River mainstem from the confluence with the Powder River to its headwaters:

(i) the water quality standard for EC is 1900 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 1000 through 2000 $\mu\text{S}/\text{cm}$]; and

(ii) the water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation limiting the value of SAR to a range of 2 through 10].

(b) for all other tributaries and surface waters in the Little Powder River watershed:

(i) the water quality standard for EC is 500 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 350 through 600 $\mu\text{S}/\text{cm}$]; and

(ii) the water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation limiting the value of SAR to a range of 2 through 10].

(7) The maximum level of SAR that is allowed as a standard under this rule will be governed by the following:

(a) when the existing level of EC is less than 350 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 100 through 500 $\mu\text{S}/\text{cm}$] the numeric water quality standard for SAR is 0.5; or

(b) when the existing level of EC is greater than or equal to 350 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 100 through 500 $\mu\text{S}/\text{cm}$] and the procedures given in (2) through (6) for calculating the SAR standard results in a value greater than 5 [or an alternative value from 3 through 10], the SAR standard is 5 [or an alternative value from 3 through 10].

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

RULE II WATER-USE CLASSIFICATION AND DESCRIPTIONS FOR PONDS AND RESERVOIRS CONSTRUCTED FOR THE DISPOSAL OF COAL BED METHANE WATER

(1) The water-use classification for waters in constructed ponds and reservoirs that hold water produced from coal bed methane development and are not located in drainage systems that reach other state waters is G-1

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

RULE III G-1 CLASSIFICATION STANDARDS

(1) Waters classified G-1 are to be maintained suitable for watering wildlife and livestock, aquatic life not including fish, secondary contact recreation, and marginally suitable for irrigation. No person may violate the following specific water quality standards for waters classified G-1:

- (a) when the daily maximum water temperature is greater than 60° F the geometric mean number of organisms of the fecal coliform group may not exceed 1000 per 100 ml and no more than 10% of the samples during any 30-day period may exceed 2000 fecal coliforms per 100 ml;
- (b) EC shall not exceed 3000 µS/cm [or an alternative value in the range of 2000 through 5000 µS/cm];
- (c) the surface and ground water standards listed in WQB-7 do not apply.

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

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

17.30.602 DEFINITIONS (1) through (8) remain the same.

(9) "Electrical conductivity (EC)" means the ability of water to conduct an electrical current at 25° C. The electrical conductivity of water represents the amount of total dissolved salts in the water and is expressed as microSiemens/centimeter (µS/cm) or micromhos/centimeter (µmhos/cm) or equivalent units and is corrected to 25° C.

(9) through (24) remain the same, but are renumbered (10) through (25).

(26) "Sodium adsorption ratio (SAR)" means a value representing the relative amount of sodium ions to the combined amount of calcium and magnesium ions in water using the following formula: $SAR = [Na]/(([Ca] + [Mg]) / 2)^{1/2}$, where all concentrations are expressed as milliequivalents of charge per liter.

(26) through (31) remain the same but are renumbered (27) through (32).

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

17.30.715 CRITERIA FOR DETERMINING NONSIGNIFICANT CHANGES IN WATER QUALITY (1) The following criteria will be used to determine whether certain activities or classes of activities will result in nonsignificant changes in existing water quality due to their low potential to affect human health or the environment. These criteria consider the quantity and strength of the pollutant, the length of time the changes will occur, and the character of the pollutant. Except as provided in (2) ~~of this rule~~, changes in existing surface or ground water quality resulting from the activities that meet all the criteria listed below are nonsignificant, and are not required to undergo review under 75-5-303, MCA:

(a) through (f) remain the same.

(g) changes in the quality of water for electrical conductivity and sodium adsorption ratio and for any parameter for which there are only narrative water quality standards if the changes will not have a measurable effect on any existing or anticipated use or cause measurable changes in aquatic life or ecological integrity.

(2) through (4) remain the same.

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

REASON: Why Numeric Standards are Necessary The Board is proposing the adoption of New Rule I in order to establish numeric water quality standards for electrical conductivity (EC) and sodium adsorption ratio (SAR) for the Tongue River, Rosebud Creek, Powder River, and Little Powder River watersheds. The adoption of numeric standards for these parameters is necessary to ensure that the designated and existing uses of these waters for agricultural purposes will be protected during the development of coal bed methane (CBM) currently being proposed in Montana.

The Bureau of Land Management estimates that, in Montana, more than 20,000 coal bed methane wells may be developed in the Tongue River and Powder River basins. Each of these wells will produce about 2.5-10 gallons of water per minute. Water produced during CBM development may have an EC value of 2,200 $\mu\text{S}/\text{cm}$ and a SAR value of 40. These values, especially the SAR values, are well above almost all of the existing in-stream values for EC and SAR that have been recorded in the Tongue River, Rosebud Creek, Powder River and Little Powder River watersheds. In addition, the predicted SAR value of 40 in produced CBM water is well above the value that will adversely impact irrigated agriculture. If the produced water from these wells is discharged to surface waters, then the discharge must occur under a Montana Pollutant Discharge Elimination System (MPDES) permit and in compliance with all water quality laws and state-adopted standards.

At present, the State does not have numeric standards for EC and SAR. As a result, permit limits are based upon the narrative water quality standard that prohibits substances in water in concentrations that are "harmful to human, animal, plant or aquatic life." ARM 17.30.637(1)(d) (emphasis added). Translating the narrative standard into an enforceable permit limit on a case-by-case basis will likely be time-consuming, controversial, and may result in inconsistent or differing permit limits due to various interpretations among the permit writers. The Board is proposing numeric water quality standards in new Rule I to provide a reliable and consistent method of developing MPDES permit limits that will protect the designated agricultural uses of the affected waters. Adopting numeric standards would also alleviate any uncertainty in determining when a violation of the State's water quality standards will occur and provide a specific regulatory basis for protecting state waters from discharges of CBM water originating in Wyoming or on tribal lands.

Not adopting numeric water quality standards for EC and SAR may result in inconsistent application of the narrative standards and will likely result in administrative and legal challenges of MPDES permits. If numeric standards are not adopted, it is also likely that impacts to beneficial uses will occur from discharges originating in Montana, Wyoming or tribal lands because there will likely be differing interpretations of water chemistry, soils, plant tolerance, and climatic data among these three entities.

Reason for the Proposed Numeric Standards

The proposed water quality standards for EC and SAR apply to the Tongue River, Rosebud Creek, Powder River and Little Powder River and to the water bodies that are tributary to these rivers. The proposed standards are being established to protect riparian plants and field crops that are irrigated with water from these rivers and streams. The Board believes that standards for EC and SAR are both necessary, because EC and SAR together affect the ability of plants to survive. Specifically, EC is a measure of the amount of dissolved solids ("salts") in water that, at high enough levels, will cause a decrease in plant growth or may cause the destruction of plants. In distinction, SAR is the relative amount of sodium to calcium and magnesium in water. At high enough levels of SAR in irrigation water, the sodium adsorbed by the soil will impair soil structure by decreasing the permeability of the soil and ultimately reducing or eliminating the amount of water available for crops.

Rationale for EC Standards during the Irrigation Season (April 1 - October 31)

The Board is proposing to adopt numeric standards for EC that are applicable only during the irrigation season when the protection of water quality for agricultural use is a concern.

Under New Rule I(3) through (7), the time period between April 1 and October 31 is being proposed for the irrigation season standards, because that is the time that irrigation in the affected area normally occurs.

In order to derive standards for EC during the irrigation season, the Board considered the type of plants being irrigated in the affected area, the sensitivity of those plants to EC, the leaching fractions that are occurring, and an adjustment factor that may be applied due to the dilution effect of precipitation. As a starting point, the irrigation season standards for EC are being established to protect the most saline-sensitive plants that are produced in the affected area, which are field beans. The upper limit of EC that is protective of field beans is a value of 1000 $\mu\text{S}/\text{cm}$ in the soil water. In order to ensure that the upper limit of 1000 $\mu\text{S}/\text{cm}$ in the soil water is not exceeded, the soil water EC value was converted to an irrigation water standard using leaching fractions and a precipitation adjustment factor, because these are the primary factors that determine the relationship between soil water and irrigation water EC.

As indicated above, the proposed EC standards for the irrigation season vary depending upon the type of irrigation used in the various watersheds and the differing leaching fractions that occur as a result of these irrigation practices. For the Tongue River and Rosebud Creek, a leaching fraction of 15% was used as a basis for the EC standards. This leaching fraction was used because a leaching fraction of 15% is typical of conventional sprinkler and flood irrigation, which is used in the Tongue River basin and in the lower reaches of Rosebud Creek. In distinction, the Board used a 30% leaching fraction to develop the Powder River and Little Powder River standards, because a leaching fraction of 30% is typical for flood irrigation in the Powder River Valley. In addition, the proposed EC standards for the irrigation season use an adjustment factor to account for the dilution effect of precipitation on irrigation water.

After applying the adjustment factors and leaching fractions discussed above to the level of EC that is protective of the most saline-sensitive plants during the irrigation season, the Board is proposing a numeric EC standard of 1000 $\mu\text{S}/\text{cm}$ for the Tongue River, a standard of 1000 $\mu\text{S}/\text{cm}$ for Rosebud Creek, and a standard of 1900 $\mu\text{S}/\text{cm}$ for the Powder River and Little Powder River. For the tributaries to these rivers and streams, a standard of 500 $\mu\text{S}/\text{cm}$ is being proposed due to the much lower leaching fraction associated with irrigation systems on the tributaries.

Rationale for a Maximum EC Standard for the Non-irrigation Season (November through March)

The Board is proposing to adopt a maximum standard for EC that is applicable when irrigation is not a concern. During the time period extending from November 1 through March 31, an EC value of 2000 $\mu\text{S}/\text{cm}$ is being proposed to protect riparian

vegetation throughout the affected watersheds. An EC value of 2000 $\mu\text{S}/\text{cm}$ is being proposed because it reflects the natural water quality in the Powder River and Little Powder River, which have healthy riparian vegetation even though they have recorded mean values of EC that range between 1800 and 2000. Given that natural levels of EC at 2000 $\mu\text{S}/\text{cm}$ maintain healthy riparian vegetation, an EC standard of 2000 during non-irrigation season will protect plant growth in the riparian zone.

Rationale for the SAR Standards

The Board is proposing standards for SAR, because a high SAR value in irrigation water has the potential to impair soil structure and, consequently, impair or restrict the permeability of the soil.

Given that the harmful effects of a high SAR value decrease as the salinity of the water increases, the Board is proposing to adopt a SAR standard that will be derived by a formula. The formula proposed for adoption is expressed as $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$. Using this formula, the value of EC in the streams and rivers will determine the numeric standard for SAR. However, the SAR value derived from the formula cannot be used when the in-stream values for EC are extremely low or high.

At an EC of 350 $\mu\text{S}/\text{cm}$ or less, the formula would dictate that the standard for SAR is less than zero. Given this nonsensical result, the formula does not apply when the EC is less than 350 $\mu\text{S}/\text{cm}$. Instead, when EC is at 350 $\mu\text{S}/\text{cm}$ or less, the proposed standard for SAR is 0.5. See New Rule I(7).

At an EC value above 1000 $\mu\text{S}/\text{cm}$, a maximum SAR standard of 5 is being proposed. See New Rule I(7). A maximum standard of 5 for SAR is necessary for the following reason. If the soil water has an EC of 1000 $\mu\text{S}/\text{cm}$ and an SAR value of 5, leaching as a result of rainfall can cause SAR problems in the surface soil. Impacts to the soil structure may occur because dilution from precipitation will cause the EC to decrease at a faster rate than the SAR thereby increasing the likelihood of a reduction in infiltration in the soils.

Although the Board is proposing to adopt the specific numeric standards for EC and SAR discussed above, the Board is also inviting the public to comment on the range of values and any alternative SAR formula, as indicated by the brackets within the text of new Rule I. The Board will consider all comments and suggestions as to why different EC and SAR values should be adopted as the applicable water quality standards during this rulemaking.

Why a New Classification is Necessary

The Board is proposing the adoption of New Rules II and III in order to create a new water-use classification and standards for CBM produced water that is held in constructed ponds and reservoirs that are not located in natural drainage-

ways or channels. The adoption of New Rules II and III is necessary because under Montana's existing classification system, all ponds and reservoirs within the Powder River drainage and Tongue River drainage are classified as suitable for fish and aquatic life and agricultural purposes. Since CBM produced water held in ponds and reservoirs will not be suitable for fish and only marginally suitable for aquatic life and agricultural use, the Board is proposing a new classification in Rule II for CBM produced waters. Under Rule III, the designated uses of CBM produced water held in ponds and reservoirs will be limited to watering livestock and wildlife, secondary contact recreation (such as boating or wading) and will be designated marginally suitable for aquatic life (not including fish) and for agricultural use.

If the Board does not establish a new classification for ponds and reservoirs containing CBM produced water, CBM ponds and reservoirs would be classified as B-2, B-3, or C-3 under the existing classification system. As such, CBM ponds and reservoirs would be required to meet water quality standards that fully protect fish and agricultural uses. However, CBM produced water in its natural state will not meet the water quality standards necessary to protect fish and fully support agricultural uses.

Specifically, CBM produced water often has elevated levels of parameters that are harmful to fish, such as ammonia and dissolved oxygen. Therefore, it is likely that CBM produced water will not meet the standards of C-3 waters that are protective of fish. In addition, some of the CBM ponds will be physically unsuitable for fish growth and propagation. For example, some of the ponds will be too shallow to support fish and some of them may go dry. In some of the ponds, evaporation will cause concentrations of certain parameters to the point that they will violate the water quality standards that apply to C-3 waters. Finally, the narrative standard preventing concentrations of substances that would harm agricultural use (e.g., SAR) would be violated in most cases.

The proposed new classification and standards in Rules II and III recognize that the primary beneficial use of CBM ponds and reservoirs is for livestock and wildlife watering and establishes standards to protect those uses.

Why a Modification to the Nondegradation Rule is Necessary

The Board is proposing to amend ARM 17.30.715 to specify that the nonsignificance criteria for EC and SAR will be determined under the criteria used for parameters that have only narrative water quality standards. The proposed amendment is necessary due to the Board's proposal to adopt numeric water quality standards for the parameters EC and SAR.

Under current rules, EC and SAR are regulated under the narrative water quality standard that prohibits substances in water in concentrations that are "harmful" to human health, aquatic life, and plant life. ARM 17.30.637(1)(d). As such, nonsignificant changes in water quality resulting from

discharges of EC and SAR are determined under a rule implementing Montana's nondegradation policy that applies only to parameters with narrative water quality standards. See ARM 17.30.715(1)(g). Under this rule, changes in water quality for parameters for which there are only narrative standards are considered nonsignificant, "...if the changes will not have a measurable effect on any existing or anticipated use or cause measurable changes in aquatic life or ecological integrity." (emphasis added). Upon adoption of numeric standards for EC and SAR the nonsignificance criteria for parameters with only narrative standards will no longer apply. Accordingly, the Board must amend the rules to specifically provide that the nonsignificance criteria currently applicable to only narrative standards will also apply to EC and SAR.

Alternatively, the Board could adopt nonsignificance criteria for EC and SAR by either defining those parameters as "harmful," in which case the nonsignificance criteria allowing changes up to 50% of the standard under ARM 17.30.715(1)(f) would apply, or the Board could adopt a new nonsignificance threshold, such as allowing 10% of the remaining assimilative capacity. The Board is rejecting both of these alternatives for the reasons given below.

Recorded data from the U.S.G.S. and Department files indicates that both EC and SAR fluctuate naturally in the Tongue, Powder, and Little Powder rivers to the extent that the proposed numeric standards in New Rule I will often be exceeded. Since the policy of "maintaining" existing "high quality" water will not prevent EC and SAR from naturally degrading to the point that standards are exceeded, the alternative of adopting rules that allow only de minimis changes in water quality is neither justified nor practical. Regardless of the treatment used by a particular discharger to prevent changes in water quality that will exceed a de minimis threshold, the Tongue, Powder, and Little Powder rivers will naturally and unpredictably exceed any such criteria throughout the year. Furthermore, a de minimis requirement, such as 10% of the assimilative capacity, would be virtually impossible to comply with or enforce. Slight changes in EC or SAR are extremely difficult to measure. A de minimis threshold based on a percentage of the assimilative capacity would require virtually continuous monitoring of SAR and EC levels in the receiving water. Moreover, since the waters at issue are often not "high quality" and will naturally exceed significance thresholds up to the point where the new standards are exceeded, the alternative of allowing only de minimis changes in water quality is not warranted.

Given the natural fluctuations of EC and SAR in the Tongue, Powder, and Little Powder rivers, the Board believes that retaining the current nonsignificance criteria applicable only to parameters with narrative standards is justified. By adopting the proposed numeric standards, the Department will be able to ensure that agricultural uses are fully protected by imposing these new standards in MPDES permits. By amending the rules to specify that the nonsignificance threshold for

narrative standards will apply to EC and SAR, the Board will be adopting a threshold that, similar to the proposed standards, will protect existing agricultural uses by prohibiting any "measurable effect" on those uses.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us and must be received no later than 5:00 p.m., October 3, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

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.
Chairman

Reviewed by:

John R. North
John F. North, Rule Reviewer

Certified to the Secretary of State, August 19, 2002.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING ON
of New Rules I through III,)	PROPOSED ADOPTION AND
pertaining to standards for)	AMENDMENT
electrical conductivity and)	
sodium adsorption ratio and)	
classifications for)	(WATER QUALITY)
constructed coal bed methane)	
water holding ponds, and the)	
amendment of ARM 17.30.602 and)	
17.30.715 pertaining to)	
definitions for water quality)	
standards and nonsignificance)	
criteria)	

TO: All Concerned Persons

1. On September 26, 2002 at 9:30 a.m., the Board of Environmental Review will hold public hearings at Miles Community College, Main Building, Rooms 106, 107, and 108, 2715 Dickinson, Miles City, Montana, and on September 27, 2002, at 9:30 a.m. in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in these public hearings or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., September 16, 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 NUMERIC STANDARDS FOR ELECTRICAL CONDUCTIVITY (EC) AND SODIUM ADSORPTION RATIO (SAR) ((1) No person may violate the numeric water quality standards identified below.

(2) Except as provided in (7) and in [New Rule III], the numeric standards for EC and SAR for Rosebud Creek, the Tongue, Powder, and Little Powder river watersheds from November 1 through March 31 are as follows:

(a) the numeric water quality standard for EC is 2000 µS/cm (or an alternative value in the range of 1000 through 2500 µS/cm); and

(b) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., SAR = (EC x 0.0071) - 2.475) [or adopt a different equation that

quantifies the relationship between EC and SAR limiting values of SAR to a range of 1 through 10].

(3) Except as provided in (7) and in [New Rule III], the numeric standards for EC and SAR for the Tongue River watershed from April 1 through October 31 are as follows:

(a) for the mainstem of the Tongue River from the confluence with the Yellowstone River upstream to the northern border of the Northern Cheyenne Indian Reservation:

(i) the numeric water quality standard for EC is 1000 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 750 through 2000 $\mu\text{S}/\text{cm}$]; and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation that quantifies the relationship between SAR and EC limiting the value of SAR to a range of 2 through 10].

(b) for the mainstem of the Tongue River from the northern border of the Northern Cheyenne Indian Reservation to the southern border of the Northern Cheyenne Indian Reservation:

(i) the numeric water quality standard for EC is 900 $\mu\text{S}/\text{cm}$ (or an alternative value in the range of 690 through 2000 $\mu\text{S}/\text{cm}$); and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation that quantifies the relationship between SAR and EC limiting the value of SAR to a range of 2 through 10].

(c) for the mainstem of the Tongue River from the southern border of the Northern Cheyenne Indian Reservation up to and including the Tongue River Reservoir:

(i) the numeric water quality standard for EC is 700 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 550 through 2000 $\mu\text{S}/\text{cm}$]; and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation that quantifies the relationship between SAR and EC limiting the value of SAR to a range of 2 through 10].

(d) for the mainstem of the Tongue River from the inlet to the Tongue River Reservoir to the most upstream crossing of the Montana-Wyoming boundary:

(i) the numeric water quality standard for EC is 600 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 530 through 2000 $\mu\text{S}/\text{cm}$]; and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation that quantifies the relationship between SAR and EC limiting the value of SAR to a range of 2 through 10].

(e) for all other tributaries and surface waters in the Tongue River watershed:

(i) the numeric water quality standard for EC is 500 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 350 through 600 $\mu\text{S}/\text{cm}$]; and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation that quantifies the relationship between SAR and EC limiting the value of SAR to a range of 2 through 10].

(4) Except as provided in (7) and in [New Rule III], the numeric standards for EC and SAR for the Rosebud Creek watershed from April 1 through October 31 are as follows:

(a) for the mainstem of Rosebud Creek from the confluence with the Yellowstone River to the headwaters:

(i) the numeric water quality standard for EC is 1000 $\mu\text{S}/\text{cm}$ (or an alternative value in the range of 1000 through 2500 $\mu\text{S}/\text{cm}$); and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation that quantifies the relationship between SAR and EC limiting the value of SAR to a range of 2 through 10].

(b) for all other tributaries and surface waters in the Rosebud Creek watershed:

(i) the numeric water quality standard for EC is 500 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 350 through 600 $\mu\text{S}/\text{cm}$]; and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation that quantifies the relationship between SAR and EC limiting the value of SAR to a range of 2 through 10].

(5) Except as provided in (7) and in [New Rule III], the numeric standards for EC and SAR for the Powder River watershed from April 1 through October 31 are as follows:

(a) for the mainstem of the Powder River from the confluence with the Yellowstone River to the Wyoming border except for the Little Powder River watershed:

(i) the numeric water quality standard for EC is 1900 $\mu\text{S}/\text{cm}$ (or an alternative value in the range of 1000 through 2500 $\mu\text{S}/\text{cm}$); and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation that quantifies the relationship between SAR and EC limiting the value of SAR to a range of 2 through 10].

(b) for all other tributaries and surface waters in the Powder River watershed except for the Little Powder River:

(i) the numeric water quality standard for EC is 500 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 350 through 600 $\mu\text{S}/\text{cm}$]; and

(ii) the numeric water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.00071) - 2.475$) [or adopt a different equation that quantifies the relationship between SAR and EC limiting the value of SAR to a range of 2 through 10].

(6) Except as provided in (7) and in [New Rule III], the numeric standards for EC and SAR for the Little Powder River watershed from April 1 through October 31 are as follows:

(a) for the mainstem of the Little Powder River from the confluence with the Powder River to its headwaters:

(i) the water quality standard for EC is 1900 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 1000 through 2500 $\mu\text{S}/\text{cm}$]; and

(ii) the water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation that quantifies the relationship between SAR and EC limiting the value of SAR to a range of 2 through 10].

(b) for all other tributaries and surface waters in the Little Powder River watershed:

(i) the water quality standard for EC is 500 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 350 through 600 $\mu\text{S}/\text{cm}$]; and

(ii) the water quality standard for SAR is the value derived after multiplying 0.0071 times the existing level of EC and then subtracting 2.475 (i.e., $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$) [or adopt a different equation that quantifies the relationship between SAR and EC limiting the value of SAR to a range of 2 through 10].

(7) The maximum level of SAR that is allowed as a standard under this rule will be governed by the following:

(a) when the existing level of EC is less than 350 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 100 through 500 $\mu\text{S}/\text{cm}$] the numeric water quality standard for SAR is 0.5; or

(b) when the existing level of EC is greater than or equal to 350 $\mu\text{S}/\text{cm}$ [or an alternative value in the range of 100 through 500 $\mu\text{S}/\text{cm}$] and the procedures given in (2) through (6) for calculating the SAR standard results in a value greater than 5 [or an alternative value from 3 through 10], the SAR standard is 5 [or an alternative value from 3 through 10].

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

RULE II WATER-USE CLASSIFICATION AND DESCRIPTIONS FOR PONDS AND RESERVOIRS CONSTRUCTED FOR THE DISPOSAL OF COAL BED METHANE WATER

(1) The water-use classification for waters in constructed ponds and reservoirs that hold water produced from

coal bed methane development and are not located in drainage systems that reach other state waters isG-1.

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

RULE III G-1 CLASSIFICATION STANDARDS (1) Waters classified G-1 are to be maintained suitable for watering wildlife and livestock and secondary contact recreation, and marginally suitable for irrigation and aquatic life not including fish. No person may violate the following specific water quality standards for waters classified G-1:

(a) when the daily maximum water temperature is greater than 60° F the geometric mean number of organisms of the fecal coliform group may not exceed 1000 per 100 ml and no more than 10% of the samples during any 30-day period may exceed 2000 fecal coliforms per 100 ml;

(b) EC shall not exceed 3000 µS/cm [or an alternative value in the range of 2000 through 5000 µS/cm];

(c) the surface and ground water standards listed in WQB-7 do not apply.

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

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

17.30.602 DEFINITIONS (1) through (8) remain the same.

(9) "Electrical conductivity (EC)" means the ability of water to conduct an electrical current at 25° C. The electrical conductivity of water represents the amount of total dissolved salts in the water and is expressed as microSiemens/centimeter (µS/cm) or micromhos/centimeter (µmhos/cm) or equivalent units and is corrected to 25° C.

(9) through (24) remain the same, but are renumbered (10) through (25).

(26) "Sodium adsorption ratio (SAR)" means a value representing the relative amount of sodium ions to the combined amount of calcium and magnesium ions in water using the following formula: $SAR = [Na]/(([Ca]+[Mg])/2)^{1/2}$, where all concentrations are expressed as milliequivalents of charge per liter.

(26) through (31) remain the same but are renumbered (27) through (32).

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

17.30.715 CRITERIA FOR DETERMINING NONSIGNIFICANT CHANGES IN WATER QUALITY (1) The following criteria will be used to determine whether certain activities or classes of activities will result in nonsignificant changes in existing water

quality due to their low potential to affect human health or the environment. These criteria consider the quantity and strength of the pollutant, the length of time the changes will occur, and the character of the pollutant. Except as provided in (2) ~~of this rule~~, changes in existing surface or ground water quality resulting from the activities that meet all the criteria listed below are nonsignificant, and are not required to undergo review under 75-5-303, MCA:

(a) through (f) remain the same.

(g) changes in the quality of water for electrical conductivity and sodium adsorption ratio and for any parameter for which there are only narrative water quality standards if the changes will not have a measurable effect on any existing or anticipated use or cause measurable changes in aquatic life or ecological integrity.

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

IMP: 75-5-303, MCA

REASON: Why Numeric Standards are Necessary The Board is proposing the adoption of New Rule I in order to establish numeric water quality standards for electrical conductivity (EC) and sodium adsorption ratio (SAR) for the Tongue River, Rosebud Creek, Powder River, and Little Powder River watersheds. The adoption of numeric standards for these parameters is necessary to ensure that the designated and existing uses of these waters for agricultural purposes will be protected during the development of coal bed methane (CBM) currently being proposed in Montana.

The Bureau of Land Management estimates that, in Montana, more than 20,000 coal bed methane wells may be developed in the Tongue River and Powder River basins. Each of these wells will produce about 2.5-10 gallons of water per minute. Water produced during CBM development may have an EC value of 2,200 $\mu\text{S}/\text{cm}$ and a SAR value of 40. These values, especially the SAR values, are well above almost all of the existing in-stream values for EC and SAR that have been recorded in the Tongue River, Rosebud Creek, Powder River and Little Powder River watersheds. In addition, the predicted SAR value of 40 in produced CBM water is well above the value that will adversely impact irrigated agriculture. If the produced water from these wells is discharged to surface waters, then the discharge must occur under a Montana Pollutant Discharge Elimination System (MPDES) permit and in compliance with all water quality laws and state-adopted standards.

At present, the State does not have numeric standards for EC and SAR. As a result, permit limits are based upon the narrative water quality standard that prohibits substances in water in concentrations that are "harmful to human, animal, plant or aquatic life." ARM 17.30.637(1)(d) (emphasis added). Translating the narrative standard into an enforceable permit limit on a case-by-case basis will likely be time-consuming, controversial, and may result in inconsistent or differing permit limits due to various interpretations among the permit

writers. The Board is proposing numeric water quality standards in new Rule I to provide a reliable and consistent method of developing MPDES permit limits that will protect the designated agricultural uses of the affected waters. Adopting numeric standards would also alleviate any uncertainty in determining when a violation of the State's water quality standards will occur and provide a specific regulatory basis for protecting state waters from discharges of CBM water originating in Wyoming or on tribal lands.

Not adopting numeric water quality standards for EC and SAR may result in inconsistent application of the narrative standards and will likely result in administrative and legal challenges of MPDES permits. If numeric standards are not adopted, it is also likely that impacts to beneficial uses will occur from discharges originating in Montana, Wyoming or tribal lands because there will likely be differing interpretations of water chemistry, soils, plant tolerance, and climatic data among these three entities.

Reason for the Proposed Numeric Standards

The proposed water quality standards for EC and SAR apply to the Tongue River, Rosebud Creek, Powder River and Little Powder River and to the water bodies that are tributary to these rivers. The proposed standards are being established to protect riparian plants and field crops that are irrigated with water from these rivers and streams. The Board believes that standards for EC and SAR are both necessary, because EC and SAR together affect the ability of plants to survive. Specifically, EC is a measure of the amount of dissolved solids ("salts") in water that, at high enough levels, will cause a decrease in plant growth or may cause the destruction of plants. In distinction, SAR is the relative amount of sodium to calcium and magnesium in water. At high enough levels of SAR in irrigation water, the sodium adsorbed by the soil will impair soil structure by decreasing the permeability of the soil and ultimately reducing or eliminating the amount of water available for crops.

Rationale for EC Standards during the Irrigation Season (April 1 - October 31)

The Board is proposing to adopt numeric standards for EC that are applicable only during the irrigation season when the protection of water quality for agricultural use is a concern. Under New Rule I(3) through (7), the time period between April 1 and October 31 is being proposed for the irrigation season standards, because that is the time that irrigation in the affected area normally occurs.

In order to derive standards for EC during the irrigation season, the Board considered the type of plants being irrigated in the affected area, the sensitivity of those plants to EC, the leaching fractions that are occurring, and an adjustment factor that may be applied due to the dilution

effect of precipitation. As a starting point, the irrigation season standards for EC are being established to protect the most saline-sensitive plants that are produced in the affected area, which are field beans. The upper limit of EC that is protective of field beans is a value of 1000 $\mu\text{S}/\text{cm}$ in the soil water. In order to ensure that the upper limit of 1000 $\mu\text{S}/\text{cm}$ in the soil water is not exceeded, the soil water EC value was converted to an irrigation water standard using leaching fractions and a precipitation adjustment factor, because these are the primary factors that determine the relationship between soil water and irrigation water EC.

As indicated above, the proposed EC standards for the irrigation season vary depending upon the type of irrigation used in the various watersheds and the differing leaching fractions that occur as a result of these irrigation practices. For the Tongue River and Rosebud Creek, a leaching fraction of 15% was used as a basis for the EC standards. This leaching fraction was used because a leaching fraction of 15% is typical of conventional sprinkler and flood irrigation, which is used in the Tongue River basin and in the lower reaches of Rosebud Creek. In distinction, the Board used a 30% leaching fraction to develop the Powder River and Little Powder River standards, because a leaching fraction of 30% is typical for flood irrigation in the Powder River Valley. In addition, the proposed EC standards for the irrigation season use an adjustment factor to account for the dilution effect of precipitation on irrigation water.

After applying the adjustment factors and leaching fractions discussed above to the level of EC that is protective of the most saline-sensitive plants during the irrigation season, the Board is proposing a numeric EC standard of 1000 $\mu\text{S}/\text{cm}$ for the Tongue River, a standard of 1000 $\mu\text{S}/\text{cm}$ for Rosebud Creek, and a standard of 1900 $\mu\text{S}/\text{cm}$ for the Powder River and Little Powder River. For the tributaries to these rivers and streams, a standard of 500 $\mu\text{S}/\text{cm}$ is being proposed due to the much lower leaching fraction associated with irrigation systems on the tributaries.

Why the Board is Proposing to Adopt Varying EC Values as the Applicable Water Quality Standard for Four Separate Segments of the Tongue River

The Board is proposing to adopt varying levels of EC as the applicable water quality standard for four separate segments of the mainstem of the Tongue River in order to allocate the assimilative capacity of the river water in terms of EC. As used in this discussion, the phrase "assimilative capacity" means the amount of water in a stream that is "higher" quality than that required by the applicable water quality standard. The "assimilative capacity" of a stream is determined by calculating the difference between the existing in-stream concentration of a parameter and the maximum concentration that could be allowed under the applicable water quality standard.

In Rosebud Creek, the Powder and the Little Powder rivers, there is no assimilative capacity for EC, because the recorded mean value of EC for those waters is already at or above the proposed water quality standards. There is, however, assimilative capacity in the Tongue River. The highest mean EC value recorded in the Tongue River was recorded near Miles City at a value of 751 $\mu\text{S}/\text{cm}$. Using the highest recorded in-stream value of 751 $\mu\text{S}/\text{cm}$ and subtracting that value from the proposed EC standard of 1000 $\mu\text{S}/\text{cm}$, the assimilative capacity for EC in the Tongue River is 249 $\mu\text{S}/\text{cm}$. By adopting EC standards that progressively become more stringent in the upstream segments of the Tongue River, the proposed water quality standards will allocate the assimilative capacity of the river in terms of EC.

The Board is proposing standards that allocate the assimilative capacity of the Tongue River in order to ensure that the CBM resource is fairly divided among all interested persons. In this case, there are four political entities that have a stake in CBM development in the Tongue River basin: Montana, Wyoming, the Northern Cheyenne, and the Crow. Since salinity tends to accumulate in the lower reaches of the Tongue River, the potential exists that the most upstream CBM developer could use up all of the river's assimilative capacity. If the upstream developer were allowed to discharge up to the proposed EC standard of 1000 $\mu\text{S}/\text{cm}$, the upstream developer would thereby preclude downstream developers from discharging untreated CBM water into the Tongue River as a method for developing the resource. Allocation of the assimilative capacity through the adoption of water quality standards will assure that each developer will receive a fair share of the potential development.

The allocations for each Tongue River segment are based upon BLM's reasonably foreseeable development projections of CBM development in the Tongue River watershed. Based upon these predictions, each political entity has been allocated a proportion of the assimilative capacity for EC equal to its proportion of the total number of wells predicted in the drainage. Accordingly, allocations were made as follows: 18% for Wyoming, 4% for the Crow, 6% for the Northern Cheyenne, and 72% for Montana. Each entity's allotted proportion of the assimilative capacity for EC was then used to determine the maximum allowable EC at each gauging station, beginning at the Miles City gage where the applicable water quality standard being proposed for EC is 1000 $\mu\text{S}/\text{cm}$. As a result of this process, the proposed EC standards for the four river segments, as defined by the following gauging stations, are: 530 $\mu\text{S}/\text{cm}$ at the State line; 700 $\mu\text{S}/\text{cm}$ near Birney; 900 $\mu\text{S}/\text{cm}$ at the Brandenburg Bridge; and 1000 $\mu\text{S}/\text{cm}$ at Miles City.

Rationale for a Maximum EC Standard for the Non-irrigation Season (November through March)

The Board is proposing to adopt a maximum standard for EC that is applicable when irrigation is not a concern. During

the time period extending from November 1 through March 31, an EC value of 2000 $\mu\text{S}/\text{cm}$ is being proposed to protect riparian vegetation throughout the affected watersheds. An EC value of 2000 $\mu\text{S}/\text{cm}$ is being proposed because it reflects the natural water quality in the Powder River and Little Powder River, which have healthy riparian vegetation even though they have recorded mean values of EC that range between 1800 and 2000. Given that natural levels of EC at 2000 $\mu\text{S}/\text{cm}$ maintain healthy riparian vegetation, an EC standard of 2000 during non-irrigation season will protect plant growth in the riparian zone.

Rationale for the SAR Standards

The Board is proposing standards for SAR, because a high SAR value in irrigation water has the potential to impair soil structure and, consequently, impair or restrict the permeability of the soil.

Given that the harmful effects of a high SAR value decrease as the salinity of the water increases, the Board is proposing to adopt a SAR standard that will be derived by a formula. The formula proposed for adoption is expressed as $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$. Using this formula, the value of EC in the streams and rivers will determine the numeric standard for SAR. However, the SAR value derived from the formula cannot be used when the in-stream values for EC are extremely low or high.

At an EC of 350 $\mu\text{S}/\text{cm}$ or less, the formula would dictate that the standard for SAR is less than zero. Given this nonsensical result, the formula does not apply when the EC is less than 350 $\mu\text{S}/\text{cm}$. Instead, when EC is at 350 $\mu\text{S}/\text{cm}$ or less, the proposed standard for SAR is 0.5. See New Rule I(7).

At an EC value above 1000 $\mu\text{S}/\text{cm}$, a maximum SAR standard of 5 is being proposed. See New Rule I(7). A maximum standard of 5 for SAR is necessary for the following reason. If the soil water has an EC of 1000 $\mu\text{S}/\text{cm}$ and an SAR value of 5, leaching as a result of rainfall can cause SAR problems in the surface soil. Impacts to the soil structure may occur because dilution from precipitation will cause the EC to decrease at a faster rate than the SAR thereby increasing the likelihood of a reduction in infiltration in the soils.

Although the Board is proposing to adopt the specific numeric standards for EC and SAR discussed above, the Board is also inviting the public to comment on the range of values and any alternative SAR formula, as indicated by the brackets within the text of new Rule I. The Board will consider all comments and suggestions as to why different EC and SAR values should be adopted as the applicable water quality standards during this rulemaking.

Why a New Classification is Necessary

The Board is proposing the adoption of New Rules II and III in order to create a new water-use classification and

standards for CBM produced water that is held in constructed ponds and reservoirs that are not located in natural drainage-ways or channels. The adoption of New Rules II and III is necessary because under Montana's existing classification system, all ponds and reservoirs within the Powder River drainage and Tongue River drainage are classified as suitable for fish and aquatic life and agricultural purposes. Since CBM produced water held in ponds and reservoirs will not be suitable for fish and only marginally suitable for aquatic life and agricultural use, the Board is proposing a new classification in Rule II for CBM produced waters. Under Rule III, the designated uses of CBM produced water held in ponds and reservoirs will be limited to watering livestock and wildlife, secondary contact recreation (such as boating or wading) and will be designated marginally suitable for aquatic life (not including fish) and for agricultural use.

If the Board does not establish a new classification for ponds and reservoirs containing CBM produced water, CBM ponds and reservoirs would be classified as B-2, B-3, or C-3 under the existing classification system. As such, CBM ponds and reservoirs would be required to meet water quality standards that fully protect fish and agricultural uses. However, CBM produced water in its natural state will not meet the water quality standards necessary to protect fish and fully support agricultural uses.

Specifically, CBM produced water often has elevated levels of parameters that are harmful to fish, such as ammonia and dissolved oxygen. Therefore, it is likely that CBM produced water will not meet the standards of C-3 waters that are protective of fish. In addition, some of the CBM ponds will be physically unsuitable for fish growth and propagation. For example, some of the ponds will be too shallow to support fish and some of them may go dry. In some of the ponds, evaporation will cause concentrations of certain parameters to the point that they will violate the water quality standards that apply to C-3 waters. Finally, the narrative standard preventing concentrations of substances that would harm agricultural use (e.g., SAR) would be violated in most cases.

The proposed new classification and standards in Rules II and III recognize that the primary beneficial use of CBM ponds and reservoirs is for livestock and wildlife watering and establishes standards to protect those uses.

Why a Modification to the Nondegradation Rule is Necessary

The Board is proposing to amend ARM 17.30.715 to specify that the nonsignificance criteria for EC and SAR will be determined under the criteria used for parameters that have only narrative water quality standards. The proposed amendment is necessary due to the Board's proposal to adopt numeric water quality standards for the parameters EC and SAR.

Under current rules, EC and SAR are regulated under the narrative water quality standard that prohibits substances in water in concentrations that are "harmful" to human health,

aquatic life, and plant life. ARM 17.30.637(1)(d). As such, nonsignificant changes in water quality resulting from discharges of EC and SAR are determined under a rule implementing Montana's nondegradation policy that applies only to parameters with narrative water quality standards. See ARM 17.30.715(1)(g). Under this rule, changes in water quality for parameters for which there are only narrative standards are considered nonsignificant, "...if the changes will not have a measurable effect on any existing or anticipated use or cause measurable changes in aquatic life or ecological integrity." (emphasis added). Upon adoption of numeric standards for EC and SAR the nonsignificance criteria for parameters with only narrative standards will no longer apply. Accordingly, the Board must amend the rules to specifically provide that the nonsignificance criteria currently applicable to only narrative standards will also apply to EC and SAR.

Alternatively, the Board could adopt nonsignificance criteria for EC and SAR by either defining those parameters as "harmful," in which case the nonsignificance criteria allowing changes up to 50% of the standard under ARM 17.30.715(1)(f) would apply, or the Board could adopt a new nonsignificance threshold, such as allowing 10% of the remaining assimilative capacity. The Board is rejecting both of these alternatives for the reasons given below.

Recorded data from the U.S.G.S. and Department files indicates that both EC and SAR fluctuate naturally in the Tongue, Powder, and Little Powder rivers to the extent that the proposed numeric standards in New Rule I will often be exceeded. Since the policy of "maintaining" existing "high quality" water will not prevent EC and SAR from naturally degrading to the point that standards are exceeded, the alternative of adopting rules that allow only de minimis changes in water quality is neither justified nor practical. Regardless of the treatment used by a particular discharger to prevent changes in water quality that will exceed a de minimis threshold, the Tongue, Powder, and Little Powder rivers will naturally and unpredictably exceed any such criteria throughout the year. Furthermore, a de minimis requirement, such as 10% of the assimilative capacity, would be virtually impossible to comply with or enforce. Slight changes in EC or SAR are extremely difficult to measure. A de minimis threshold based on a percentage of the assimilative capacity would require virtually continuous monitoring of SAR and EC levels in the receiving water. Moreover, since the waters at issue are often not "high quality" and will naturally exceed significance thresholds up to the point where the new standards are exceeded, the alternative of allowing only de minimis changes in water quality is not warranted.

Given the natural fluctuations of EC and SAR in the Tongue, Powder, and Little Powder rivers, the Board believes that retaining the current nonsignificance criteria applicable only to parameters with narrative standards is justified. By adopting the proposed numeric standards, the Department will be able to ensure that agricultural uses are fully protected

by imposing these new standards in MPDES permits. By amending the rules to specify that the nonsignificance threshold for narrative standards will apply to EC and SAR, the Board will be adopting a threshold that, similar to the proposed standards, will protect existing agricultural uses by prohibiting any "measurable effect" on those uses.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us and must be received no later than 5:00 p.m., October 3, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

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.
Chairman

Reviewed by:

John F. North
JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State, August 19, 2002.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 8.32.1408) ON PROPOSED AMENDMENT
and 8.32.1409, relating to)
LPN IV procedures)

TO: All Concerned Persons

1. On September 23, 2002, at 2:00 p.m., a public hearing will be held in room 438, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

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 Board of Nursing no later than 5:00 p.m., September 16, 2002, to advise us of the nature of the accommodation that you need. Please contact Jill Caldwell, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2342, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2343, e-mail dlibsdnur@state.mt.us.

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

8.32.1408 STANDARDS RELATING TO THE LICENSED PRACTICAL NURSE'S ROLE IN INTRAVENOUS (IV) THERAPY (1) and (2) remain the same.

(3) "Standard intravenous solution" means an isotonic or hypotonic solution ~~with no additives~~ and the following hypertonic solutions ~~with no additives~~:

(a) through (f) remain the same.

(4) Any of the following IV therapy tasks related to peripheral vessel IVs may be performed by a ~~practical nurse~~ LPN:

(a) perform the initial venipuncture using a standard IV solution containing additives not otherwise prohibited by this rule, or using an intermittent infusion device, provided that the venipuncture is:

(i) made into a peripheral vessel only, ~~no and not into a peripherally inserted central catheter (PICC) lines; or~~

(ii) made into a cannula or butterfly device ~~no midline catheters.~~

(b) through (e) remain the same.

(f) mix medication solution from a unit dose vial, except potassium, and add to IV solution or volutrol;

(g) remains the same.

(h) flush intermittent infusion devices with heparin flush or normal saline solution;

(i) remains the same.

(j) administer metered dose of medication, including narcotics, by way of a patient controlled analgesia (PCA) pump;

(k) hang a PCA medication cartridge subsequent to the first, when the RN has initialized and programmed the unit;

~~(k)~~ (l) discontinue peripheral IVs except for PICC;

~~(l)~~ (m) monitor and report the client physiological and psychological response to IV therapy; and

~~(m)~~ (n) administration administer of—prescribed injectable local anesthetics prior to venipuncture if prescribed or allowed by standing order.

(5) Any of the following tasks related to central venous lines may be performed by a ~~practical nurse~~ an LPN:

(a) change standard solutions, which may include additives not otherwise prohibited, on continuous flow, pre-established central line system; and

(b) accessing, draw blood draws, flushes with a normal saline solution or a specific heparin flush solution, and dressing—changes dressings.

(6) through (6)(b) remain the same.

(c) accessing, blood draws, flushes with a normal saline solution or a specific heparin flush solution, and dressing changes of hemodialysis central-venous catheters; and

(d) remains the same.

AUTH: ~~37-8-415~~ 37-1-131, 37-8-202, MCA

IMP: ~~37-8-415~~ 37-1-131, 37-8-202, MCA

REASON: The Board believes that it is reasonably necessary to amend this rule because enhanced technology has increased the safety of administering IVs. LPNs are now prepared to mix and hang standard solutions with additives other than potassium. Potassium will remain an additive only an RN can mix, because it is significantly more dangerous than other IV additives. More IV additive errors are made with potassium than with other drugs.

The board finds it necessary to include narcotics with the PCA pumps since PCA pumps are used in practice almost exclusively for pain management, and therefore a narcotic would necessarily be administered. The board believes that, once the RN has initialized and programmed the PCA pump, the LPN may then safely hang subsequent cartridges.

The board finds it necessary to clarify subsection (4)(n) because although it has always been appropriate for an LPN to inject local anesthetics prior to venipuncture, the board wants to clarify that the LPN would do so only when following either a specific physical order or a standing order.

The board finds it necessary to amend (5)(b) and (6)(c) to specify and clarify which flush solution tasks are allowable by LPNs.

These rule changes will affect all Montana LPNs (3,162) and the facilities in which they function. The rule may also affect all RNs (10,362) who previously needed to perform these functions because the LPNs could not.

8.32.1409 PROHIBITED IV THERAPIES (1) The following IV therapy tasks may not be performed by a practical nurse:

(a) IV push medications directly into the vein except as in ARM 8.32.1408(4)(h);

(b) administration of any of the following:

(i) remains the same.

(ii) narcotics except in ARM 8.32.1408;

(iii) through (xv) remain the same.

(xvi) ~~antiarrhythmics~~ antidysrhythmics; and

(xvii) remains the same.

(c) performance of arterial:

(i) sticks;

(ii) arterial blood draws; or

(iii) flushes of arterial line flushes;

(d) remains the same.

AUTH: ~~37-8-415~~ 37-1-131, 37-8-202, MCA

IMP: ~~37-8-415~~ 37-1-131, 37-8-202, MCA

REASON: The board believes these rule changes are reasonably necessary because technology has evolved, thus making IV therapy more routine in health care today. LPNs currently have the skills, knowledge and abilities to perform more IV therapy procedures than they did when the original rules were adopted. The amendments make a minor change in which IV solutions are considered standard. The other changes are for clarification of when a local anesthetic may be used to start an IV, and what constitutes a flush solution.

The existing rules were in conflict since ARM 8.32.1408 stated the LPN could administer medications through a PCA pump, and ARM 8.32.1409 stated the LPN could not administer narcotics. Recognizing that many pain medications given through a PCA pump are usually narcotics, the board felt it necessary to amend the rule. Once an RN has initialized and programmed the PCA pump, the board believes that the LPN may safely hang subsequent cartridges. The board office has received several calls on this issue, and the board wants to clarify any confusing language in the rules.

These amendments will affect all Montana LPNs (3,162) and the facilities in which they function. The rule may also affect all RNs (10,362) who previously needed to perform these functions because the LPNs could not.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to:

Jill Caldwell
Board of Nursing
Department of Labor and Industry
P.O. Box 200513
Helena, Montana 59620-0513

by facsimile to (406) 841-2343, or by e-mail to dlibsdnur@state.mt.us and must be received no later than 5:00 p.m., September 30, 2002.

5. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://www.discoveringmontana.com/dli/nur>, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address does not excuse late submission of comments.

6. The Board of Nursing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Nursing administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2343, e-mailed to dlibsdnur@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

7. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

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

9. The Board of Nursing will meet on October 10, 2002, in Helena to consider the comments made by the public, the

proposed responses to those comments, and take final action on the proposed amendments. The meeting will be held in conjunction with the Board's regular meeting. Members of the public are welcome to attend the meeting and listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed amendments beyond the September 30, 2002, deadline.

BOARD OF NURSING
JACK BURKE, RN, 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, August 19, 2002.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of ARM 24.114.501) PROPOSED AMENDMENT
and 24.114.503, relating to)
architecture matters)

TO: All Concerned Persons

1. On September 23, 2002, at 10:30 a.m. a public hearing will be held in room 471, 301 South Park, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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 Board of Architects no later than 5:00 p.m., September 13, 2002, to advise us of the nature of the accommodation that you need. Please contact Ms. Lorri Sandrock, 301 South Park, P.O. Box 200513, Helena, MT 59620-0513; telephone (406) 841-2386; fax (406) 841-2305 or e-mail dlibsdark@state.mt.us.

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

24.114.501 EXAMINATION (1) through (6) remain the same.

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

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

REASON: There is reasonable necessity to amend ARM 24.114.501 in order to decrease a potential hardship on Montana architects-in-training. Montana is one of three jurisdictions that have the 4-year requirement in which to complete the Architect Registration Examination (A.R.E.). Nationwide graduates are putting off their examinations because they can go to work under a licensed architect without obtaining a license of their own. The candidates when faced with the expiration of their four years in which to complete the exam are simply transferring their base state to another jurisdiction. This rule change would affect approximately 47 examination candidates. Since

1993, 3 examination candidates have failed to complete their exams within the 4-year time period and their eligibility has expired. Since November of 2001, 6 examination candidates have transferred their base state away from Montana.

24.114.503 LICENSURE OF APPLICANTS WHO ARE REGISTERED IN ANOTHER STATE (1) and (1)(a) remain the same.

~~(2) All applicants who are registered in another state or any foreign jurisdiction approved by the board and who were licensed in their respective jurisdiction prior to January 1, 1966, shall submit evidence of having successfully completed an NCARB-approved seismic exam or other board approved component.~~

~~(3) An applicant who is registered in another state or any foreign jurisdiction approved by the board and who meets all reciprocal licensure requirements except the seismic force exam, must successfully complete only that exam to satisfy licensure requirements.~~

AUTH: 37-1-131, 37-65-204, MCA
IMP: 37-1-304 37-65-304, MCA

REASON: There is reasonable necessity to amend ARM 24.114.503 to remove archaic and unnecessary provisions. The Board finds that the architecture examinations in all other states now contain provisions that adequately test an architect's understanding of seismic forces that are applicable to safely design Montana buildings.

4. Interested 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:

Lorri Sandrock
Board of Architects
Department of Labor and Industry
P.O. Box 200513
Helena, Montana 59620-0513

by facsimile to (406) 841-2305, or by e-mail to dlibsdark@state.mt.us and must be received no later than 5:00 p.m., September 30, 2002.

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

technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

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

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

8. Darcee Moe, attorney has been designated to preside over and conduct the hearing.

BOARD OF ARCHITECTS
EUGENE VOGL, PRESIDENT

/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: August 19, 2002.

BEFORE THE BOARD OF LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC
amendment of ARM 24.153.402,) HEARING ON PROPOSED
24.153.403, 24.153.502, and) AMENDMENT
24.153.2101, all pertaining to)
landscape architects matters)

TO: All Concerned Persons

1. On September 30, 2002, at 10:30 a.m., a public hearing will be held in room #471, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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 Board of Landscape Architects no later than 5:00 p.m., on September 20, 2002, to advise us of the nature of the accommodation that you need. Please contact Lorri Sandrock, Board of Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2386; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdlar@state.mt.us.

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

24.153.402 SEALS (1) In accordance with 37-66-308, MCA, landscape architects shall affix a seal, ~~from either a rubber stamp or a metal embosser to the appropriate documents. Either type may be used.~~ which must contain the name of the landscape architect, the landscape architect's Montana license number, the words "LICENSED LANDSCAPE ARCHITECT, STATE OF MONTANA" and the signature of the person who applied the seal. For the purpose of sealing printed drawings, specifications, and other appropriate documents, each landscape architect shall obtain an embossing or rubber stamp and a reproduction facsimile of the seal to be used on documents prepared by or under the supervision of a licensed landscape architect. The seal or reproducible facsimile must be applied on all original drawings to produce legible reproduction on all copies or prints made from the drawings.

~~(2) Authorized sizes of seals include a pocket size, commercially designated as 1 5/8 inches and a desk size, commercially designated as 2 inches. In addition to the language required by 37-66-308, MCA, all seals must bear the individual's license number. Licensees may order seals through the board office in Helena.~~

(2) A signature is:

(a) an original manual signature of the person who applied it; or

(b) a digital signature, which is an electronic authentication process attached or logically associated with an electronic document, must be:

(i) unique to the person using it;

(ii) capable of verification;

(iii) under the sole control of the person using it; and

(iv) linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

(3) remains the same.

AUTH: 37-66-202, MCA

IMP: 37-66-308, MCA

REASON: There is reasonable necessity to amend 24.153.402 to delete subsection (2) because the Board no longer will order the landscape architects seals, nor dictate the size of the seal. New licensees will be required to purchase their own seals. During FY 2003, the Board collected \$175.00 in fees for seals but spent \$208.15 ordering the seals. With the board's limited budget it is not feasible to continue to provide this service. The new portions of this rule will address the seal requirements when using electronic documents and digital signatures.

24.153.403 FEE SCHEDULE (1) Fees shall be transmitted by money order or check payable to Montana state board of landscape architects. The board assumes no responsibility for loss in transit of such remittances. All fees are non-refundable.

(2) The fees for landscape architects are as follows:

(a) Application (regular examination fee not included) \$150

(b) remains the same.

~~(c) Examination fees are set by the testing agency and vary. Contact the board office for a current schedule of test section fees.~~

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

~~(g) Stamps -- seals 25~~

~~(h)(f) Examination administration fee 50~~

(3) Examination fees are set by the testing agency and vary. Contact the board office for a current schedule of test section fees. Examination fees are paid directly to the board.

AUTH: 37-1-134, 37-66-202, MCA

IMP: 37-1-134, 37-66-202, 37-66-301, 37-66-304, ~~37-66-305~~, ~~37-66-307~~, ~~37-66-308~~, MCA

REASON: There is reasonable necessity to amend ARM 24.153.403 to eliminate the fee for ordering the stamp/seal because of the proposed amendments to ARM 24.153.402. Licensees no longer may order stamps/seals through the board office and will be required to purchase their own seals. Amended information regarding what

individual fees cover and to whom examination fees are paid is necessary for clarification. Finally, there is reasonable necessity to amend the implementing cites to delete the reference to a statute repealed by Chapter 492, Laws of 2001 (House Bill 120).

During the last fiscal year, seven persons ordered seals from the Board. The Board therefore estimates that approximately seven persons a year will be affected by the proposed amendment. Assuming that the cost for individuals ordering a seal is the same as the cost for the Board, the Board estimates that each of those seven persons will spend an additional \$4.75 for the cost of the seal. The Board notes that individuals may be able to find appropriate seals at a lower price, however, and that if the Board continued to make seals available, the Board would have to raise its fees a corresponding amount pursuant to 37-1-134, MCA.

24.153.502 EXAMINATIONS (1) ~~As required by 37-66-305, MCA, all~~ All candidates must sit for a uniform national examination to be held at such time and place as the board may designate. Applications for taking the examination must be received in the board office 90 days prior to the next scheduled examination. The applicant will be notified in writing approximately 30 days prior to the examination date of whether the applicant may sit for the examination.

(2) through (6) remain the same.

AUTH: 37-66-202, MCA

IMP: 37-66-304, ~~37-66-305~~, MCA

REASON: There is reasonable necessity to delete the implementing cite and the reference to a statute repealed by Chapter 492, Laws of 2001 (House Bill 120).

24.153.2101 RENEWALS (1) remains the same.

(2) The board finds that the nation relies on members of the national guard and the reserve branches of the armed forces for the nation's security, and that the members of the national guard and reserve forces are subject to call to active duty on short notice. In consideration of that service to the nation, the board finds that it is appropriate to defer the licensing renewal obligations of such individuals called to active duty status, provided that the individual is not required by the armed forces to maintain current professional or occupational licensing as a condition of serving in the armed forces.

(a) A person in the military service of the United States and who is in an active duty status, as defined by the Soldiers' and Sailors' Civil Relief Act, upon submission of appropriate evidence, is entitled to the following privileges:

(i) The person is not required to timely pay a renewal fee for license renewal that comes due while the person is in active duty status. The renewal fee is payable within six months following the person's discharge from active duty status.

Unless otherwise relieved from the renewal application requirements, the person must timely apply for license renewal.

(ii) If the person provides proof to the board of the person's active duty status before the person's license expires, the person is relieved from having to timely submit a renewal application and any related documents or information during the period while the person is on active duty status. The person has six months following the person's discharge from active duty status to submit to the board such renewal applications and any related documents or information that came due during the period of the person's active duty status.

(b) In order to gain the benefits of this rule, the person must provide the board with proof of active duty status, including the date upon which the person was called to active duty status. The board may require the licensee to periodically provide information to the board regarding the person's active duty status or the date of the person's discharge from active duty status.

(c) A license that has not lapsed continues in the same status as existed the day before the person was called to active duty status, and remains in that status until the person renews the license or six months have elapsed from the person's discharge from active duty status, whichever comes first.

AUTH: ~~37-1-101~~, 37-1-131, 37-66-202, MCA
IMP: ~~37-1-101~~, 37-1-131, 37-66-307, MCA

REASON: There is reasonable necessity to amend ARM 24.153.2101 to address the concerns of those licensees who are members of the national guard or reserve forces of the armed services and have been called to active duty status following the September 11, 2001, terrorist attacks against the United States. Section 10-1-605, MCA, was repealed in 2001 pursuant to Chapter 492, Laws of 2001, in order to address issues raised by the armed forces concerning the license status of health care providers in military service. The proposed language is designed to minimize hardships that might arise if a licensee is suddenly called to active duty. The Board does not license health care providers. The proposed language treats renewal obligations in a manner consistent with the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Landscape Architects, 301 South Park Avenue, PO Box 200513 Helena, Montana 59620, by facsimile to (406) 841-2305, or by e-mail to dlibsdlar@state.mt.us and must be received no later than 5:00 p.m., September 30, 2002.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://discoveringmontana.com/dli/bsd> under the Board of Landscape Architects rule notice section. The Department

strives to make the electronic copy of this 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, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

6. The Board of Landscape Architects maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Landscape Architects administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsdlar@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

7. The Board of Landscape Architects will meet at 1:00 p.m. on October 16, 2002, during the Board's regular meeting in Helena, Montana at the Board's offices, 301 South Park Avenue, Helena, Montana, to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendments. Members of the public are welcome to attend the meeting and listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed amendments beyond the September 30, 2002, deadline.

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

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

BOARD OF LANDSCAPE ARCHITECTS
SHELLY ENGLER, CHAIR

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

/s/ Kevin Braun
Kevin Braun,
Rule Reviewer

Certified to the Secretary of State August 19, 2002

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed)NOTICE OF PROPOSED ADOPTION
adoption of New Rules I through)
V relating to exemptions,)
reduced tax rates, and credits)
for energy facilities)NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On October 18, 2002, the department proposes to adopt New Rules I through V relating to tax exemptions, reduced tax rates, and credits for energy facilities.

2. On April 11, 2002, the department published notice of public hearing in MAR Notice No. 42-2-690, regarding these rules. Comments were received at the hearing and subsequently thereafter regarding these rules. Based on information provided by interested parties, the rules have been amended substantially. Therefore, the department is filing this proposal notice containing the revised rules and extending an opportunity for additional comments to the rules prior to the adoption of the rules.

3. 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 September 16, 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.

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

NEW RULE I ELECTRICAL GENERATION AND TRANSMISSION FACILITY - QUALIFICATION AND PUBLICATION (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, where there is a contract, an application form, which is available from the department, must be provided containing the following:

- (a) total amount of power contracted;
- (b) total power capacity of the plant;

(c) term of the contract (length in years) - if less than 20 years, proof of an offer for the remaining years will be required by a specific date; and

(d) cost-based rate of return.

(3) In order to qualify for the exemption, reduced tax rate, or credit, where there is an offer, but not a contract, the following must be provided:

(a) proof of publication of the offer 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; and

(b) a copy of the publication in the newspapers set forth in (3)(a), which must include:

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

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

(ii) the 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) the appropriate person to contact regarding the offer.

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

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

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to establish that the new facility has met the requirements of offering a contract. The department believes there is a requirement that it be notified of the offer to ensure that the offer is bona fide or a contract exists. The material being requested by the department will be used to confirm qualification for the exemption, reduced tax rate, or credit. This rule applies to statutory changes made by HB 643 and SB 134, 506, and 508 of the 2001 legislative session.

NEW RULE II ELECTRICAL GENERATION AND TRANSMISSION FACILITY - REPORTING (1) The material specified in [New Rule I] 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.

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 New Rule II to clarify when and where reports must be sent in order to qualify for the exemption, reduced tax rate, or credit. 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.

NEW RULE III ELECTRICAL GENERATION AND TRANSMISSION FACILITY - VERIFICATION (1) The taxpayer must make available to the department in Helena, at a place, date, and time specified by the department, a copy of the contract and other information showing the basis for the application referred to in [New Rule I].

(2) The department will review the information required in [New Rule I] and may request additional supporting documentation.

(a) The requested information may include, but is not limited to:

(i) source documents detailing the total amount of power contracted and the total capacity of the plant;

(ii) source documents detailing the term of the contract (length in years) - if less than 20 years, proof of an offer for the remaining years will be required by a specific date;

(iii) price per kilowatt source documents and calculation;

(iv) gross revenue associated with the contract;

(v) costs associated with the contract;

(vi) net operating income after tax associated with the contract;

(vii) source documents providing the detail for the cost-based rate of return; and

(viii) total plant investment.

(3) In order for documents obtained during this verification process to be able to be considered for protection under [New Rule V], the taxpayer must indicate and mark those documents as such at the time they are provided to the department.

(4) The department may conduct an independent analysis to verify the cost-based rate of return, term or contract, and amount of power contracted.

(5) 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, contributions; and

(e) other settlement items.

(6) Notification to the taxpayer and review by the department will occur as follows:

(a) the taxpayer will be provided an initial approval or denial in writing within 30 days of receipt of all of the information required under [New Rule I];

(b) the department may request additional information to further verify the material provided in [New Rule I] within 30 days after the initial approval or denial is issued;

(c) the department may issue a notice of denial within an additional 180 days from the receipt of all requested additional information; and

(d) the dates referenced in (6)(a) through (c) may be extended by mutual consent of the parties.

(7) If the provisions of the contract are not being met, 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. Such a disallowance would occur if the applicable percentage rate of the facility's net generating output is not maintained, or the taxpayer fails to perform the contract.

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 a departmental process to verify a cost-based rate of return. The department believes that it has the responsibility to verify and potentially calculate allowable costs of production and rate of return. The documents sought during this verification will be necessary to justify the exemption, reduced tax rate or credit to taxpayers, legislators, and governmental auditors. The rule provides for a requirement of the applicant to indicate and mark documents that the applicant believes to be proprietary in order to protect competitive information. A specific review period is necessary 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 SB 506 and 508 of the 2001 legislative session.

NEW RULE IV 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 set forth in [New Rule III].

(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 to determine whether the provisions of the contract are being met.

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 IV 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 V REQUEST FOR INFORMATION (1) If the department receives a request from a third party for information that a taxpayer has marked as protected pursuant to [New Rule III], it will notify the taxpayer of the request.

(2) The taxpayer shall respond to this notification within 15 working days advising the department which information should be protected and not released.

(3) The department will evaluate the response and determine the appropriateness of the taxpayer's determination that the information is protected.

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 New Rule V to address inquiries from third parties for documents contained in the department's files pertaining to an application for the tax exemption, reduced tax rate, or credit. The rule requires the department to advise the applicant of a request for information. Timely notification to the applicant is important so that the applicant can review their files to determine whether or not the requested information should be released. It is also important that the taxpayer respond to the department in a timely manner so the department can either provide the requested information to the third party or advise them that it is considered proprietary.

5. 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 September 27, 2002.

6. 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 September 27, 2002.

7. 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.

8. 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.

9. 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 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.

10. 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 August 19, 2002

BEFORE THE BOARD OF CRIME CONTROL
OF THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 23.14.401 regarding)
membership on the Peace)
Officers Standards and)
Training Advisory Council and)
ARM 23.14.404 regarding)
POST training hours awarded)
for college credits)

To: All Concerned Persons

1. On June 27, 2002, the Board of Crime Control published notice of the proposed amendment of ARM 23.14.401 regarding membership on the Peace Officers Standards and Training Advisory Council and of ARM 23.14.404 regarding POST training hours awarded for college credits at page 1697 of the 2002 Montana Administrative Register, Issue Number 12.

2. No public hearing was requested and no comments were received.

3. The Board of Crime Control has amended ARM 23.14.401 and ARM 23.14.404 as proposed.

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

/s/ Ali Sheppard
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State August 19, 2002.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 8.32.303,)
8.32.307, 8.32.411, 8.32.425,)
8.32.1503, 8.32.1504, and)
8.32.1508, pertaining to)
nursing licensure matters)

TO: All Concerned Persons

1. On June 13, 2002, the Department of Labor and Industry published notice of the proposed amendment of the above-stated rules at page 1621 of the 2002 Montana Administrative Register, Issue Number 11.

2. On July 3, 2002, a public hearing on the proposed amendment of the above-stated rules was conducted in Helena, and members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period on July 11, 2002.

3. The Board of Nursing (Board) has thoroughly considered all of the comments made. A summary of the comments received (grouped by rule) and the Board's responses are as follows:

8.32.307 CLINICAL NURSE SPECIALIST PRACTICE:

Comment 1: Several commenters opposed the use of the terms "interdependent and collaborative". The commenters felt that the Clinical Nurse Specialist (CNS) practice should be independent. They believed that adding "interdependent" connoted a need for supervision. Likewise, the CNSs providing comment also want the opportunity to be granted prescriptive authority.

Response 1: In proposing these rule changes, the Board concluded that CNS practice is not the independent delivery of health care services. However, the Board recognizes the CNSs' independent and collaborative delivery and management of expert level nursing care and has amended the rule accordingly. Collaboration implies a skill-sharing relationship with another provider. Currently, no non-psychiatric CNS has prescriptive authority. The certification for CNS practice does not include the independent management of disease process, diagnosing and prescribing. The Board believes there is a difference between Nurse Practitioner (NP) practice and CNS practice. This rule change defines the difference. As an illustration, the American Nurses Credentialing Center (ANCC) allows the psychiatric CNSs to take the Psychiatric Mental Health (PMH) NP exam if there is evidence of additional academic credit in physical assessment, advanced pathophysiology, advanced pharmacology, and diagnosis

and management. The Board voted to delete the phrase "interdependent and collaborative" from the proposed rule and substitute the phrase "independent and collaborative", and has amended the rules accordingly.

Comment 2: Comments included opposition to adding the words "according to protocols".

Response 2: The Board states that the reason supporting this change is outlined above, in Response 1. The Board believes that the CNS practice is not independent disease or illness management, and therefore, following established protocols is necessary.

Comment 3: Several commenters asked for a "grandfather clause" for the current CNSs in psychiatric-mental health.

Response 3: The Board believes that the proposed language in ARM 8.32.307(2) is the "grandfather" language. Only those psychiatric mental health CNSs certifying after July 1, 2005, will be affected.

Comment 4: One commenter asked the Board to have the National Academy of Clinical Nurse Specialists review and comment on the proposed rules.

Response 4: The Board reviewed the standards and position of this association before proposing these rules.

Comment 5: An opponent stated that the amendment expanded the CNS practice to include ordering durable medical equipment and non-pharmacological treatment. Confusion was also expressed over sections (1)(d)(iii) and (1)(d)(iv).

Response 5: CNSs have always had the ability to order durable medical equipment. This is outlined in ARM 8.32.307(1)(c) and (d). The new language clarifies this ability and makes the differentiation between CNS and NP practices. Section (1)(d)(iii) allows only non-pharmacological treatment, while (1)(d)(iv) allows the CNS to work under protocols. All RNs can currently work under protocols. This is not a change from existing rules.

Comment 6: An opponent stated that proposed (2) allows for independent practice of the psychiatric CNSs and Medicare does not allow for this.

Response 6: The Board acknowledges these comments, and states that the Board defines nursing practice in Montana, and is not concerned with reimbursement issues.

Comment 7: An opponent stated that APRNs may only prescribe medications with physician collaboration.

Response 7: The Board notes that prescriptive authority for APRNs is recognized under section 37-8-202, MCA. Therefore, no physician collaboration is required.

Comment 8: An opponent argued that regardless of the grandfather clause for current psychiatric CNSs, if the Board requires the psychiatric NP exam in the future for independent practice, insurance companies will no longer recognize the current "grandfathered" CNSs.

Response 8: The Board acknowledges the comments. The Board has the authority to define scope of practice and licensure requirements for nurses in Montana and does not involve itself in reimbursement issues.

Comment 9: An opponent stated that the term "interdependent" is confusing and will not enhance the standard of care. The opponent felt this change would limit access to psychiatric mental health care in Montana.

Response 9: The Board does not intend to limit access to care for any population in Montana. The proposed changes were meant to strengthen the qualifications for those providers who have not been required in the past to prove adequate training and competence. The Board changed the language to read, "independent and collaborative", and has amended the rules accordingly.

Comment 10: An opponent felt that requiring psychiatric CNSs certifying after 2005 to take the NP exam will limit the number of psychiatric mental health providers in the state.

Response 10: The Board acknowledges the comments, but notes that the opponent did not provide any data to support the claim. The Board believes that strengthening the requirements for those who practice as psychiatric nurse practitioners will only enhance the psychiatric mental health care rendered in Montana.

8.32.411 RENEWALS:

Comment 11: Opponents argued against requiring continuing education for all APRNs.

Response 11: In drafting these rules, the Board concluded that the requirement for continuing education is a part of professional practice and responsibility. Furthermore, the same continuing education required for renewing certification will be acceptable for renewing APRN status.

Comment 12: Commenters supported the change to a new 2-year renewal cycle.

Response 12: The Board appreciates the support of this change.

8.32.425 FEES:

This amendment involved no fee increases and there were no comments received on this proposed amendment.

8.32.1503 ADVANCED PRACTICE NURSING COMMITTEE:

Comment 13: Commenters supported the formation of this new Board committee to encompass the current Prescriptive Authority Committee. A suggestion was made for the Board to require membership on the committee of at least one APRN with prescriptive authority.

Response 13: As the Board does not currently have an APRN board member position, the suggested requirement is not possible at this time. The Board retains the consultative services of an APRN consultant who does have prescriptive authority. It may be possible in the future to add an APRN position to this committee if the 2003 legislature approves legislation that would add 2 additional member positions to the Board.

8.32.1504 INITIAL APPLICATION REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY:

Comment 14: An opponent felt that 15 hours of continuing education for a new applicant was too little.

Response 14: The 15 hours of continuing education is above and beyond the pharmacological courses required in the basic education of APRNs. The continuing education requirement is in place to address the need for a current level of minimum competency. Many other states do not have this requirement.

8.32.1508 QUALITY ASSURANCE OF ADVANCED PRACTICE REGISTERED NURSE PRACTICE:

Comment 15: Opponents commented against mandatory quality assurance.

Response 15: The Board states that quality assurance is generally recognized as part of professional practice, and the Board included this to reflect that responsibility. The amended rules are liberal as they allow for either a peer or a physician reviewer. This rule pertains to all APRNs who provide direct patient care.

Comment 16: One commenter asked the Board to provide a standardized tool for measuring quality assurance.

Response 16: The Board does not want to dictate the use of any particular tool, but rather wants the individual APRN to devise a tool that is meaningful to the APRN's practice.

Comment 17: Commenters were concerned that if their patients

had negative outcomes, it might reflect poorly upon the APRNs in their quality assurance audits.

Response 17: The Board acknowledges the concerns, and states that quality assurance is measured in terms of patient response to provider interventions. The Board recognizes that negative outcomes do occur and may not be the result of poor care or inappropriate treatment.

Comment 18: A commenter asked that an institutional quality assurance program be acceptable to meet the Board's quality assurance requirements.

Response 18: The Board will accept any plan that adequately addresses the individual APRN's practice.

Comment 19: A commenter suggested that the language read, "the charts being reviewed must be evaluated by a peer reviewer, OR by a physician of the same specialty, OR by others as approved by the board."

Response 19: The Board notes that according to the style guidelines established by the Secretary of State's Administrative Rule Bureau, the preferred grammar in this case is to use only one "or". An "or" before "by others as approved by the board" means an "or" between the other optional reviewer types.

General Comments Received:

Comment 20: Opponents criticized the Board for not including more of their peers in the rulemaking subcommittee meetings.

Response 20: The Board acknowledges these comments, but notes that the subcommittee's work was described in several of the Board's recent newsletters. The meetings were also discussed in full Board meetings, and advertised on the Board's website. Eleven meetings were held regarding revision of the APRN rules, and included board members (NP and CNS), a representative of the Montana Nurses Association, and one other APRN representative. CRNAs and a psychiatric mental health CNS were present at some of the subcommittee's meetings. Since the subcommittee met every month, it would have been unreasonable and financially restrictive to mail a hard copy meeting notice to each APRN.

Comment 21: Opponents stated that the Board did not allow enough time and notice for the proposed amendments, and that because the notice was published during the summer, many APRNs were on vacation and could not comment.

Response 21: The Board followed Montana Administrative Procedure Act (MAPA) procedures for appropriate notice and comment periods. Additionally, all APRNs, regardless of whether their names were on the Board's interested parties' list, were

mailed copies of the notice. The Board exceeded the MAPA requirements for notice and proceeded through the entire process per legal counsel's advice.

Comment 22: Another opponent argued that having a hearing the day before a holiday was bad judgment and limited participation in the process.

Response 22: The Board chose the hearing date so that the rules could be adopted at their regularly scheduled July meeting, while all necessary MAPA timelines were followed. The Board mailed notices to all APRNs and interested parties on June 12, 2002. The Board also accepted written, faxed and electronic (e-mail) versions of testimony. While the Board was not present for the hearing, the Board members received copies of all testimony and a transcript of the hearing.

4. After consideration of the comments, the Board has amended the following rules, exactly as proposed:

8.32.411 RENEWALS

8.32.425 FEES

8.32.1503 ADVANCED PRACTICE NURSING COMMITTEE

8.32.1504 INITIAL APPLICATION REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY

8.32.1508 QUALITY ASSURANCE OF ADVANCED PRACTICE REGISTERED NURSE PRACTICE

5. After consideration of the comments, the Board has amended the following rule as proposed, with the following changes, stricken matter interlined, new matter underlined:

8.32.307 CLINICAL NURSE SPECIALIST PRACTICE (1) Clinical nurse specialist practice means the ~~interdependent~~ independent and collaborative delivery and management of expert level nursing care to individuals or groups, including the ability to:

(a) through (j) same as proposed.

(2) For the psychiatric clinical nurse specialist certified before July 1, 2005, the practice of that clinical nurse specialist also includes the independent, ~~interdependent,~~ and collaborative practice of psychiatric nursing and management of expert level psychiatric nursing care to individuals or groups of individuals. The practice requires the integration of clinical knowledge with clinical practice, and may include pharmacological management.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

6. The Board is not taking action to amend ARM 8.32.303

and is not addressing any comments received pursuant to that rule at this time.

BOARD OF NURSING
JACK BURKE, RN, Chair

/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: August 19, 2002.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.11.442, relating to)
initial monetary determination)
matters)

TO: All Concerned Persons

1. On July 11, 2002, the Department of Labor and Industry published notice of the proposed amendment of ARM 24.11.442 at page 1863 of the 2002 Montana Administrative Register, Issue Number 13.

2. The agency has amended ARM 24.11.442 exactly as proposed.

3. One comment that supported the proposed amendment was received.

/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: August 19, 2002.

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

In the matter of the)	NOTICE OF ADOPTION OF
amendment of ARM 37.88.101,)	TEMPORARY EMERGENCY
37.89.106, 37.89.114,)	RULES
37.89.115 and 37.89.125)	
pertaining to mental health)	
center services and mental)	
health services plan services)	

TO: All Interested Persons

1. The Department of Public Health and Human Services is adopting the following temporary emergency rule amendments of ARM 37.88.101, 37.89.106, 37.89.114, 37.89.115 and 37.89.125 pertaining to mental health center services and mental health services plan services.

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. 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 text of the emergency rules is as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.88.101 MEDICAID MENTAL HEALTH SERVICES, AUTHORIZATION REQUIREMENTS ~~(1)~~ Mental health services may be medically necessary for a medicaid recipient under the Montana medicaid program if the recipient:

(a) is a youth who has been determined to have a serious emotional disturbance as defined in ARM 37.86.3702, or determined by the department on a case-by-case basis that treatment is necessary for early intervention and prevention of more serious emotional disturbance; or

(b) is 18 or more years of age and has been determined to have a severe disabling mental illness as defined in ARM 37.86.3502.

~~(1)~~ (2) For all mental health services provided to a medicaid recipient under the Montana medicaid program for which prior authorization is required, the following exceptions apply:

(a) the first 24 visits in the 12 month period beginning July 1, 2002 and each 12 month period thereafter for outpatient mental health counseling services billed under Current Procedure Terminology, 4th edition (CPT4) codes 90804, 90806, 90808, 90810, 90812, 90814, 90846 and 90847 only. For purposes of this rule, the term "visit" does not include a session with a physician for the purpose of medication management. Practitioners who believe that more than 24 sessions are

medically necessary may request prior authorization for additional sessions;

(b) the first 12 visits in the period from January 11, 2002 through June 30, 2002 for outpatient mental health counseling services billed under CPT4 codes 90804, 90806, 90808, 90810, 90812, 90814, 90846 and 90847 only. Practitioners who believe that more than 12 sessions are medically necessary may request prior authorization for additional sessions;

(c) the department may waive a requirement for prior authorization when the provider can document that:

(i) there was a clinical reason why the request for prior authorization could not be made at the required time; or

(ii) a timely request for prior authorization was not possible because of a failure or malfunction of equipment that prevented the transmittal of the request at the required time.

(d) the prior authorization requirement shall not be waived except as provided in this rule; and

(e) under no circumstances may a waiver under ~~(1)~~(2)(c) be granted more than 30 days after the initial date of service.

~~(2)~~ (3) The department or its designee will notify providers and recipients of applicable authorization procedures and requirements, and applicable grievance and reconsideration procedures.

~~(3)~~ (4) Review of authorization requests by the department or its designee will be made with consideration of clinical guidelines published in advance by the department or its designee.

~~(4)~~ (5) The department may review the medical necessity of services or items at any time either before or after payment in accordance with the provisions of ARM 37.85.410. If the department determines that services or items were not medically necessary or otherwise in compliance with applicable requirements, the department may deny payment or may recover any overpayment in accordance with applicable requirements.

~~(5)~~ (6) The department or its designee may require providers to report outcome data or measures regarding mental health services, as determined in consultation with providers and consumers.

AUTH: Sec. 53-6-113, MCA

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

37.89.106 MENTAL HEALTH SERVICES PLAN, MEMBER ELIGIBILITY

(1) An individual is eligible for covered services under the plan if:

(a) the individual is a youth with a serious emotional disturbance or an adult with a severe disabling mental illness; and the family of which the individual is a member has a total family income, without regard to other family resources, at or below 150% of the most recently published federal poverty level (FPL);

(b) the individual has been denied medicaid eligibility, is ineligible for medicaid by virtue of being a patient in an institution for mental diseases, or has applied for medicaid and

the application is pending. An individual who meets medicaid eligibility requirements but does not apply for medicaid is not eligible to receive services under the plan;

(c) the individual is under the age of 19 years and the individual ~~is enrolled in or~~ has been denied enrollment in Montana children's health insurance program (CHIP), as established in ARM Title 37, chapter 79;

(d) the individual is an adolescent who has met the eligibility requirements of the plan as a youth with serious emotional disturbance, but who will not meet the eligibility requirements of the plan as an adult with severe and disabling mental illness. The individual may continue to be eligible as an adolescent for the purpose of transition to independent living until the age of 21, provided the individual continues to meet income requirements; and

(e) the total number of children and the total number of adults who can be eligible for MHSP at any time is within the limits set by the department as provided in (6) of this rule.

(2) If a person who is determined eligible for the plan based upon a pending medicaid application is later determined to be eligible for medicaid:

(a) any payment received by the provider under the plan for services provided during the effective period of medicaid eligibility must be refunded to the department; and

(b) all services provided to the individual during the effective period of medicaid eligibility may be billed to medicaid according to applicable medicaid requirements.

(3) For purposes of determining the total family income under (1):

(a) the family may not spend down to the required level of income;

(b) family debts, expenses and other financial circumstances are not considered; and

(c) the most recently published FPL is the FPL most recently published in the Federal Register as of the end of the month immediately preceding the month in which the application is submitted.

(4) Members must comply with the procedures specified by the department in accordance with ARM 37.89.118 to obtain or access services under the plan.

(5) This subchapter is not intended to and does not establish an entitlement for any individual to be determined eligible for or to receive any services under the plan. The department may, in its discretion, limit services, rates, eligibility and the number of persons determined eligible under the plan based upon such factors as availability of funding, the degree of financial need, the degree of medical need or other factors.

(a) If the department determines with respect to the plan that it is necessary to reduce, limit, suspend or terminate eligibility or benefits, reduce provider reimbursement rates, reduce or eliminate service coverage or otherwise limit services, benefits or provider participation rates, in a manner other than provided in this subchapter, the department may

implement such changes by providing 10 days advance notice published in Montana major daily newspapers with statewide circulation, and by providing:

(i) 10 days advance written notice of any individual eligibility and coverage changes to affected members; and

(ii) 10 days advance written notice of coverage, rate and provider participation changes to affected providers.

(6) If the department determines that the average per-case cost of mental health services plan expenditures times the number of enrollees will exceed total appropriations, it will suspend enrollment of new recipients.

(a) the department will place the names of persons applying for enrollment who would be eligible but for the suspension of new enrollments on a waiting list.

(b) when total MHSP enrollment falls below the number which, when multiplied by the average per-case cost, equals total appropriations, the department will enroll persons whose names appear on the waiting list. Enrollment from the waiting list will be made in order of severity of need, with qualified applicants whose needs are most severe first as determined by the department based on the following:

(i) diagnosis;

(ii) functional impairment as evaluated by a licensed mental health professional designated by the department; or

(iii) availability of appropriate alternative means to obtain treatment.

(c) no person enrolled in the MHSP on September 4, 2000, shall be determined ineligible solely as a result of the determination by the department provided for in (6)(a).

(d) notwithstanding the provisions of (6)(a) through (c) of this rule, the department may enroll a qualified applicant if the applicant is:

~~(i) enrolled as a beneficiary of the children's health insurance plan (CHIP);~~

~~(ii) (i) a patient at Montana state hospital (MSH) ready for discharge; or~~

~~(iii) (ii) in imminent physical danger due to a life-threatening mental health emergency.~~

AUTH: Sec. 41-3-1103, 52-2-603, 53-2-201, 53-6-113, 53-6-131, 53-6-701, and 53-6-706 and 53-21-703, MCA

IMP: Sec. 41-3-1103, 52-2-603, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139, and 53-21-202 and 53-21-702, MCA

37.89.114 MENTAL HEALTH SERVICES PLAN, COVERED SERVICES

(1) Authorized medically necessary mental health services for a covered diagnosis are covered under the plan for members, except as provided in this subchapter.

(2) Covered services include:

(a) evaluation and assessment of psychiatric conditions by licensed and enrolled mental health providers;

~~(b) residential treatment facility services for children and adolescents who are also covered by the children's health~~

~~insurance program (CHIP);~~

~~(e) (b) primary care providers, as defined in ARM 37.86.5001(18), for screening and identifying psychiatric conditions and for medication management;~~

~~(d) (c) a psychotropic drug formulary, as specified in (6);~~

~~(e) (d) medication management, including lab services necessary for management of prescribed medications medically necessary with respect to a covered diagnosis;~~

~~(f) (e) psychological assessments, treatment planning, individual, group and family therapy, and consultations performed by licensed psychologists, licensed clinical social workers, and licensed professional counselors for treatment of covered diagnoses in private practice or in mental health centers;~~

~~(g) (f) case management services for adults with severe disabling mental illness; and~~

~~(h) the therapeutic component of therapeutic youth group home care and therapeutic family care services for children and adolescents who are also covered by CHIP; and~~

~~(i) (g) mental health center services.~~

(3) This subchapter is not intended to and does not establish an entitlement for any individual to be determined eligible for or to receive any services under the plan. The category of services, the particular provider of services, the duration of services and other specifications regarding the services to be covered for a particular member may be determined and may be restricted by the department or its designee based upon and consistent with the services medically necessary for the member, the availability of appropriate alternative services, the relative cost of services, the member's treatment plan objectives, the availability of funding, the degree of financial need, the degree of medical need and other relevant factors.

(a) If the department determines with respect to the plan that it is necessary to reduce, limit, suspend or terminate eligibility or benefits, reduce provider reimbursement rates, reduce or eliminate service coverage or otherwise limit services, benefits or provider participation, in a manner other than provided in this subchapter, the department may implement such changes by providing 10 days advance notice published in Montana major daily newspapers with statewide circulation, and by providing:

(i) 10 days advance written notice of any individual eligibility and coverage changes to affected members; and

(ii) 10 days advance written notice of coverage, rate and provider participation changes to affected providers.

(4) The department may require prior authorizations for any particular services designated by the department in accordance with ARM 37.89.118.

(a) Members must comply with the procedures required by the department in accordance with ARM 37.89.118 to obtain or access services under the plan.

(5) Coverage of medically necessary mental health services

for a covered diagnosis will not be denied solely because the member also has a non-covered diagnosis.

(6) The plan covers the medically necessary psychotropic medications listed in the department's mental health services plan drug formulary if medically necessary with respect to a covered diagnosis. The department may revise the formulary from time to time. A copy of the current formulary may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, ~~1400 Broadway~~ 555 Fuller, P.O. Box ~~202951~~ 202905, Helena, MT ~~59620-2951~~ 59620-2905.

(7) Except as provided in (7)(a), the plan covers medically necessary mental health services for covered diagnoses for members who are residents of nursing facilities, regardless of whether the services are provided in the nursing facility.

(a) The plan does not cover services defined as "nursing facility services" in ARM 37.40.302 or otherwise required by law to be provided by the nursing facility and does not cover or reimburse the nursing facility for services provided by the nursing facility.

(8) The plan covers medically necessary mental health services for any covered diagnosis for a member with a primary diagnosis of mental retardation or developmental disability, but does not cover treatment, habilitation or other services required by the member's mental retardation or developmental disability.

(9) The plan does not cover:

- (a) any form of transportation services;
- (b) detoxification, drug or alcohol evaluation, treatment or rehabilitation, regardless of the member's diagnosis; and
- (c) services provided to a nonmember who is eligible on an emergency basis during a hospital emergency room visit.

(10) A member who is an inmate in or incarcerated in a correctional or detention facility is not entitled to services under the plan, except as specifically provided in these rules.

(a) The plan covers discharge planning services in relation to a covered diagnosis prior to release from a correctional or detention facility for a member who is:

- (i) within 60 days of release;
- (ii) a youth under the custody of the department's division of child and family services or the department of corrections and who is in a correctional or detention facility;
- (iii) a prisoner in a correctional or detention facility;
- (iv) a forensic patient, as specified in (7)(a), admitted to the Montana state hospital; or
- (v) being held in a juvenile correction facility.

(b) A member incarcerated in a local government criminal detention facility who has not been adjudicated may receive medically necessary mental health services for covered diagnosis during incarceration, except that the plan does not cover the member's security or detention needs.

(c) A member may receive medically necessary mental health services for covered diagnoses after leaving the correctional or detention facility, except that the plan does not cover the

individual's security or detention needs.

(11) This subchapter is not intended to and does not establish an entitlement for any individual to be determined eligible for or to receive services under the plan. The department may limit services, rates, eligibility or the number of persons determined eligible under the plan based upon such factors as availability of funding, the degree of financial need, the degree of medical need or other factors.

(a) If the department determines with respect to the plan that it is necessary to reduce, limit, suspend or terminate eligibility or benefits, reduce provider reimbursement rates, reduce or eliminate service coverage or otherwise limit services, benefits or provider participation, in a manner other than provided in this subchapter, the department may implement such changes by providing 10 days advance notice published in Montana major daily newspapers with statewide circulation, and by providing:

(i) 10 days advance written notice of any individual eligibility and coverage changes to affected members; and

(ii) 10 days advance written notice of coverage, rate and provider participation changes to affected providers.

AUTH: Sec. 41-3-1103, 52-1-103, 52-2-603, 53-2-201, 53-6-113, 53-6-131, ~~and 53-6-706~~ and 53-21-703, MCA

IMP: Sec. 41-3-1103, 52-1-103, 52-2-603, 53-1-405, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-6-706, 53-21-139, ~~and 53-21-202~~ and 53-21-702, MCA

37.89.115 MENTAL HEALTH SERVICES PLAN, PROVIDER PARTICIPATION (1) Providers of services may request enrollment in the plan and may participate in the plan only upon approval of enrollment and according to the written provider agreement between the provider and the department and the requirements of this subchapter.

(a) The provisions of ARM 37.85.402 shall apply for purposes of provider enrollment in the plan. Providers must enroll with the department's medicaid fiscal agent in the same manner and according to the same requirements applicable under the Montana medicaid program. The department may accept current medicaid enrollment for purposes of enrollment under the plan, if the provider agrees, in a form acceptable to the department, to be bound by applicable plan requirements.

(b) For purposes of enrollment in the plan, providers must be and remain enrolled in the Montana medicaid program for the same category of service and must meet the same qualifications and requirements that apply to the provider's category of service under the Montana medicaid program.

(2) Providers in the following categories may request enrollment in the plan:

- ~~(a) residential treatment facilities;~~
- ~~(b) therapeutic youth group homes and therapeutic family care providers;~~
- ~~(c) (a) mental health centers;~~
- ~~(d) (b) psychiatrists;~~

~~(e)~~ (c) primary care providers, as defined in ARM 37.86.5001(18);

~~(f)~~ (d) licensed psychologists;

~~(g)~~ (e) licensed clinical social workers;

~~(h)~~ (f) licensed professional counselors; and

~~(i)~~ (g) outpatient pharmacies; and.

~~(j) outpatient psychiatric partial hospitalization providers.~~

(3) The department may, in its discretion, enroll as providers individuals or entities in the categories of providers specified in (2) if they apply for enrollment, if they are appropriately licensed, certified, or otherwise meet the minimum qualifications required by the department for the category of service, and if they agree to the terms of the provider agreement.

(a) Nothing in these rules requires the department to enroll any particular provider or category of provider to provide services under the plan. The department, in its discretion, may deny enrollment to any provider or category of provider. The department may, in its discretion, limit services, rates, eligibility or the number of persons determined eligible under the plan based upon such factors as availability of funding, the degree of financial need, the degree of medical need or other factors.

(i) If the department determines with respect to the plan that it is necessary to reduce, limit, suspend or terminate eligibility or benefits, reduce provider reimbursement rates, reduce or eliminate service coverage or otherwise limit services, benefits or provider participation, in a manner other than provided in this subchapter, the department may implement such changes by providing 10 days advance notice published in Montana major daily newspapers with statewide circulation, and by providing:

(A) 10 days advance written notice of any individual eligibility and coverage changes to affected members; and

(B) 10 days advance written notice of coverage, rate and provider participation changes to affected providers.

(b) A provider who is denied enrollment has no right to an administrative review or fair hearing as provided in ARM 37.5.304, et seq., ~~46.12.409, 37.5.310, 46.12.1268~~ or any other department rule.

(c) Enrollment does not imply or create any guarantee of or right to any level of utilization or reimbursement for any provider.

(4) The provisions of ARM Title 37, chapter 85, subchapter 4 and other medicaid program laws, rules and regulations regarding particular categories of service apply to participating providers and the services provided under the plan, except as specifically provided in this subchapter or the provider agreement.

(a) The provisions of ARM 37.85.414 regarding maintenance of records and related issues applies to providers of mental health services under the plan.

(i) The department and any legally authorized agency of

the state or federal government may inspect any facilities and records pertaining to services provided under the plan, including those of any provider participating in the plan.

(ii) Upon request, providers must provide complete copies of medical records to the department or its agents.

(b) For all members, providers must comply with the same confidentiality requirements that apply to information regarding medicaid recipients.

(c) The department may collect from a provider any overpayment under the plan as provided with respect to medicaid overpayments in ARM 37.85.406(9) through (10)(b). The department may recover overpayments by withholding or offset as provided in ARM 37.85.513(1).

(i) The notice and hearing provisions of ARM 37.85.512 and ~~46.12.409~~ apply to a department overpayment determination under (4)(c).

(d) The department may sanction a provider based upon the same grounds that sanctions may be imposed against a provider under the Montana medicaid program, except that a sanction may not be imposed with respect to a provider's conduct or omission under the plan based upon a medicaid requirement or prohibition that is not applicable to the plan under these rules.

(i) Sanctions imposed under (4)(d) may include termination or suspension from plan participation and required attendance at provider education sessions at the provider's expense.

(ii) The department must consider the factors listed in ARM 37.85.505 in determining whether to impose a sanction and what sanction, if any, to impose. The provisions of ARM 37.85.506 and 37.85.507 shall apply to any sanction imposed under (4)(d).

(iii) The notice and hearing provisions of ARM 37.85.512 and ~~46.12.409~~ apply to a department sanction determination under (4)(d).

(5) An enrolled provider has no right to an administrative review or fair hearing as provided in ARM 37.5.304, et seq., 37.85.411, ~~46.12.409~~, ~~37.5.310~~, ~~46.12.1268~~ or any other department rule for:

(a) a determination by the department or its agent that a particular service, item or treatment is not medically necessary;

(b) a denial of approval, authorization, certification or coverage of a service available from the provider or provided by the provider to a member; or

(c) any other issues related to the provider agreement, the provision of services to recipients or the plan, except as specifically permitted by this subchapter.

(6) An enrolled provider shall be provided an opportunity for administrative review and fair hearing as provided in ARM Title 37, chapter 2, subchapters 3 and 5 to contest a denial of correct payment by the department to the provider for a service provided to a member if:

(a) the department has determined that the particular service, including the amount, duration and frequency of the service, is medically necessary for the member to treat a

covered diagnosis and has authorized the particular service for the member according to applicable requirements; and

(b) the department has determined that the member is eligible for the plan according the requirements of ARM 37.89.106.

(7) For purposes of applying the provisions of any medicaid rule as required by this subchapter, references in the medicaid rule to "medicaid" or the "Montana medicaid program" or similar references, shall be deemed to apply to the plan as the context permits.

AUTH: Sec. 2-4-201, 41-3-1103, 53-2-201, and 53-6-113 and 53-21-703, MCA

IMP: Sec. 2-4-201, 41-3-1103, 53-1-601, 53-2-201, 53-6-113, 53-6-116, 53-6-701, 53-6-705, and 53-21-202 and 53-21-702, MCA

37.89.125 MENTAL HEALTH SERVICES PLAN, PROVIDER REIMBURSEMENT (1) Reimbursement of enrolled providers for mental health services covered under the plan and provided to plan members is as provided in ARM Title 37, chapters 5, 40, 82, 85, 86 and 88 for the same service or category of service under the Montana medicaid program, except as otherwise provided in this subchapter.

(a) For services covered under the plan, reimbursement under the plan is subject to the same requirements, restrictions, limitations, rates, fees and other provisions that would apply to the service if it were provided to a medicaid recipient, except as otherwise provided in these rules. However, if a service is not covered under the plan, the fact that the service is or would be covered by medicaid if provided to a medicaid recipient, does not entitle the provider, member or any other person or entity to coverage or reimbursement of the service under the plan.

(i) For purposes of applying medicaid rules to plan services, a person eligible for the plan under ARM 37.89.106 need not be medicaid eligible.

~~(b) For inpatient psychiatric services provided to a plan member in a residential treatment facility, the reimbursement rate shall be the medicaid rate provided in ARM 37.88.1106, less the amount of the educational component rate as established by the Montana office of public instruction. The educational component rate is available upon requests from the department's addictive and mental disorders division.~~

~~(c) For the room and board component of therapeutic youth group home and therapeutic youth family care, the rate is the lesser of:~~

~~(i) the amount specified in the department's mental health services plan fee schedule; and~~

~~(ii) the provider's usual and customary charges (billed charges).~~

~~(d) If a child or adolescent is in the custody of the state of Montana, the room and board component of therapeutic youth group home and therapeutic youth family care will not be~~

~~paid by the mental health services plan.~~

~~(e) If a child or adolescent is on a therapeutic home leave, the room and board component of therapeutic youth group home and therapeutic youth family care will not be paid by the mental health services plan.~~

(2) Provider claims for mental health services provided to members under the plan must be submitted to the department's medicaid management information system (MMIS) contractor according to requirements set forth in ARM 37.85.406. Payments will be made to the provider through the department's medicaid MMIS contractor.

(3) Providers must accept the amounts payable under this rule as payment in full for services provided to members. For purposes of this rule, the requirements of ARM 37.85.406 regarding payment in full apply to the provider, except as provided in this subchapter.

(a) Providers may bill a member who fails to show up for a scheduled service if such billing is consistent with a written policy maintained and posted by the provider, if the member has been informed of the policy in writing and if the policy applies equally to private pay patients and members.

(4) The provisions of ARM 37.85.407 apply with respect to third party resources and seeking payment from these sources.

AUTH: Sec. 53-2-201, and 53-6-113 and 53-21-703, MCA

IMP: Sec. 53-1-601, 53-2-201, 53-6-101, 53-6-116, 53-6-701, 53-6-705, and 53-21-202 and 53-21-702, MCA

3. The Department of Public Health and Human Services is adopting these emergency rules to prevent imminent peril to the public health, safety and welfare. The Department is facing imminent and substantial budget shortfalls in the Montana Medicaid Mental Health program and the Mental Health Services Plan. The Governor's Office of Budget and Program Planning projects that state surplus funds will fall below the amount specified in 17-7-140, MCA before the end of State Fiscal Year 2003. Pursuant to that statute, the Governor ordered all state agencies to implement an immediate 3.5% cost reduction to prevent the State of Montana from depleting its general fund.

17-8-104, MCA subjects public officials to civil penalties if they fail to keep expenditures, obligations and liabilities within the amount of the legislative appropriation as required by 17-8-103, MCA. Therefore, in addition to other cost saving measures, it is necessary for the Montana Medicaid mental health program and the Mental Health Services Plan (MHSP) to reduce expenditures. Without these emergency rule amendments, the Department would be required to eliminate or substantially curtail other services that are vital to the mental health of Medicaid recipients and MHSP beneficiaries. Such measures would leave a significant number of mentally ill individuals without treatment. Without adequate and appropriate treatment, mentally ill individuals would suffer aggravation of their symptoms and a deterioration in their ability to function within the community,

posing an imminent risk of harm to the health and safety of those individuals, as well as to the safety of their families and communities. Some individuals suffering aggravated symptoms will require high cost services such as hospital emergency rooms and the State Hospital. This could result in expenditures for those services exceeding projections. A budget shortfall in those services would require the Department to further reduce benefits, adding to the crisis of public health and safety.

Consequently, the Department is adopting these temporary emergency rules to limit expenditures for children's Medicaid mental health services to youth with serious emotional disturbance, unless treatment is determined on a case-by-case basis to be necessary for early intervention and treatment of a more serious emotional disturbance; to limit expenditures for adult Medicaid mental health services to individuals with severe disabling mental illness; and to eliminate MHSP services for youth who are eligible for Children's Health Insurance Plan (CHIP) benefits.

ARM 37.88.101

The Department is amending the authorization requirements for Medicaid mental health services. Effective August 16, 2002, recipients under the age of 18 years must be determined to have a serious emotional disturbance as that term is defined in ARM 37.86.3702, or be determined on a case-by-case basis to require early intervention and prevention of a more serious emotional disturbance. Recipients 18 or more years of age must be determined to have a severe disabling mental illness as that term is defined in ARM 37.86.3502 before authorization can be granted. The serious emotional disturbance determination has been a standard requirement for youth to receive mental health services such as case management services and partial hospitalization services. The severe disabling mental illness determination has been a standard requirement for persons aged 18 or more years to receive mental health services such as case management services and adult day treatment services. The emergency amendment extends those determinations to all Medicaid mental health services, except when a recipient under the age of 18 requires the services to prevent development of a more serious emotional disturbance than they currently suffer.

ARM 37.89.106

MHSP eligibility standards are amended to eliminate eligibility for persons under the age of 19 years who are eligible for CHIP. Effective August 16, 2002, to be eligible for MHSP, persons under the age of 19 must have applied for and been denied CHIP coverage.

ARM 37.89.114

Consistent with the amendments to ARM 37.89.106, MHSP covered

services are amended to eliminate residential treatment facility services and the therapeutic component of therapeutic youth group home care and therapeutic family care services for children and adolescents covered by CHIP. Those persons are no longer eligible for MHSP services. The Department is also taking this opportunity to update the address for obtaining a copy of the current psychotropic drug formulary. The address update is for administrative purposes only and is not intended to change any substantive provision of the rule.

ARM 37.89.115

In accordance with the amendments to ARM 37.89.114, the references to residential treatment facilities, outpatient psychiatric partial hospitalization, therapeutic youth group homes and therapeutic family care are deleted from the list of potential MHSP providers.

The Department is also taking this opportunity to delete references to repealed ARM 46.12.409, 46.12.1268 or both in (3)(b), (4)(c)(i), (4)(d)(iii) and (5). The Department also deleted references to ARM 37.5.310 in (3)(b), (4)(c)(i) and (5). The Department believes the references to ARM 37.5.310 are unnecessary because that rule would be included in the preceding reference to hearing procedures in ARM 37.5.304, et seq. The deletions are for administrative purposes only and are not intended to change any substantive provisions of the rule.

ARM 37.89.125

The provisions in the MHSP reimbursement rule for therapeutic youth group homes and therapeutic family care are deleted. This is consistent with the elimination of MHSP coverage of those services in ARM 37.89.114.

Fiscal impact

The Department expects these emergency rules to reduce total state and federal expenditures for Medicaid mental health and Mental Health Services Plan by \$3,855,467, including \$936,445 of savings to the state general fund.

The Department expects that these amendments will reduce the costs to the Medicaid mental health program as follows: the amendment of Medicaid mental health authorization requirements so that only services to youths and adolescents with serious emotional disturbance will be approved are expected to save \$1,796,075 total including \$486,198 state general fund dollars for state fiscal year 2003; and the amendment limiting adult services to individuals with severe disabling mental illness is expected to save \$738,825 total including \$200,000 state general fund dollars for state fiscal year 2003.

Persons affected

The Department expects these amendments to affect approximately 2200 beneficiaries enrolled in Montana Medicaid and the Mental Health Services Plan and as many as 500 providers of these services.

4. The emergency amendment will be effective upon filing, August 16, 2002.

5. A standard rulemaking procedure will be undertaken by the Department prior to the expiration of the emergency rule changes.

6. Interested persons may submit their data, views or arguments during the standard rulemaking process. 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 to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, submit by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us.

 /s/ Russ Cater
Rule Reviewer

 /s/ Russ Cater
for Gail Gray,
Director, Public Health and
Human Services

Certified to the Secretary of State August 16, 2002.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF AMENDMENT
amendment of ARM 42.13.101,)	
42.13.103, 42.13.105,)	
42.13.106, 42.13.107,)	
42.13.108, 42.13.109,)	
42.13.201, 42.13.221,)	
42.13.222, 42.13.301,)	
42.13.304, 42.13.305,)	
42.13.401, 42.13.402, and)	
42.13.601 relating to liquor)	
licensing)	

TO: All Concerned Persons

1. On June 27, 2002, the department published notice of proposed amendment of the above-stated rules relating to Chapter 13 liquor licensing rules at page 1727 of the 2002 Montana Administrative Register, issue no. 12.

2. A public hearing was held on July 22, 2002, where oral comments were received. Oral and written comments received during and subsequent to the hearing are summarized as follows along with the response of the department:

COMMENT NO. 1: ARM 42.13.101 - Mark Staples, attorney for the Montana Tavern Association, raised concerns about the increase to a violation for alterations. Mr. Staples stated that some reconsideration should be given to "no approval to alter" fine when changing the first offense fine from \$150 to \$300. This is not an earth-shaking issue, but of all the things that people seem to wander themselves into in terms of violations, this is one of the ones where education is the premier element for avoiding this. Serving after hours and serving to under-age patrons are pretty clear, and most people know that those are the laws. But there are a lot of people that will make alterations as simple as putting a door on a "john", which was needed for a long time, that do not realize it is considered an alteration. This seems to be the one place that the department doesn't want to throw that fine at them out of the box. Particularly if, given the brewers issue with patios and decks, there may be a lot of alterations in the near future.

RESPONSE NO. 1: The department has found that minimal fines do not encourage compliance. Education is the key and the department requires the licensee to be familiar with the applicable statutes and rules. The department provides those tools to the licensee upon request. These documents are available on the Internet, published in the Tavern Times, and the department staff is available to answer questions. The department believes that this increase in the fine is a

reasonable change.

COMMENT NO. 2: ARM 42.13.101(4) - Mr. Staples commented that the amendment appears to be a misprint. It reads "Reinstatement of a revoked license pursuant to this rule will not be considered until the number of violations in a three year period from the effective date of revocation totals three years or less" This should be a total of three violations rather than years.

RESPONSE NO. 2: The department agrees with the comment and the rule is amended to reference "violations" rather than "years."

COMMENT NO. 3: ARM 42.13.106 - Brian Smith, Montana State Brewers Association, presented testimony concerning the requirements that must be met when there is a change or alteration to a premises. Mr. Smith testified that he understands the department's explanation of the process and that this process needs to be clarified with more specifics, but he also stated that it seems that time limits in these rules would be appropriate, especially in ARM 42.13.106(3). He recommended that the department adopt a set time for the department to respond to a proposal from a licensee. He further commented that in (4), where it addresses the "addition of an area already licensed, the licensee must first have the premises inspected by the department of justice," it would help reduce the cost incurred by the licensee when applying for a license from the department of justice if they had a timeframe in which to expect acceptance of the proposal.

Sam Hoffman, Treasurer, Montana State Brewers Association and owner of Red Lodge Hills Brewery in Red Lodge, testified that he agreed with Mr. Smith's comments regarding the alterations of premises, but he would like the department to take it a step further by proposing the department provide a response within seven days of the application, in order to let the people considering altering their premises know whether it is approved or not. The time period would help people to get moving with their plans.

Mr. Staples stated that they agree that there shouldn't be an open-ended timeframe and there should be some reasonable timely response from the department. People need to know if they can move forward or not.

RESPONSE NO. 3: The department agrees that a specific timeframe to respond is a reasonable request. Therefore, the department has amended the rule as shown below to reflect this request. The department will notify the applicant of an approval or denial within seven days from the date it receives the application and all necessary information needed to make the determination whether the application should be approved or denied. There is no cost incurred for premises inspections by

the licensee.

COMMENT NO. 4: ARM 42.13.201(2) - Stan Kaleczyc, attorney, representing Anheuser Busch Corporation, stated the old language said alcoholic "content by weight had to be noted on certain malt beverages provided that the regulation shall not apply in cases of beer containing not more than 7% of alcohol by weight." He suggested that in order to get away from the double negatives, the amendment should read: "7% or less", in order to be consistent with the "more than 7%" that was in the prior language.

RESPONSE NO. 4: The department agrees with Mr. Kaleczyc and has amended the rule to reflect that change. The department is also adding 16-1-102 and 16-1-106, MCA, which address the requirement to identify the products that contain more than 7% of alcohol by weight.

COMMENT NO. 5: ARM 42.13.221 - Mr. Kaleczyc and Mr. Smith both commented on the justification provided in the notice as not being broad enough for the amendment. They addressed the amendment that proposes to add 27 C.F.R. part 1 and then all of part 6 through the applicable regulations. Previously part 1 of 27 C.F.R. was not included and only subsection 6.91 and 6.94 of part 6 were included. They didn't contest that department has the authority to regulate in those areas, but where the department is adding entirely new sections, it seems that it is more than a "housekeeping change," and it would have been appropriate to have a more complete explanation of why, in particular, all of part 6 is being added, and what the impact is upon all the affected parties.

RESPONSE NO. 5: The department agrees that a broader explanation of the reasonable necessity would have been appropriate. The reason for the addition of part 1 of 27 C.F.R. is necessary because it covers the requirements for basic permits. Montana is about to license a distiller, and rather than create additional new rules to cover distillers, it felt it was appropriate to adopt part 1 which covers the requirements for this type of licensing. Part 6 refers to tiedhouse regulations and the requirement of holding interest in a license, and this is all applicable to the licensing requirements under this chapter of the rules.

The department is adding 16-1-201, MCA, as an implementing cite to the rule to support the implementation of the requirements to follow the code of the United States issued under the provisions of the Federal Alcohol Administration Act, 27 U.S.C.

COMMENT NO. 6: ARM 42.13.301 - Mr. Smith testified that in his brewery he keeps a bottle of "Ever-Clear" that he is not licensed to sell or dispense to anyone. He uses this product in the process of sanitizing beer equipment and yeast cultures.

However, this material does not end up in his manufactured product. He questioned whether this would be considered a violation of this rule and would like some clarification in that regard.

Rich Miller, Gaming Industry Association - testified that he agreed with the comments presented by everybody else at the hearing and wanted to further comment on the amendment to ARM 42.13.301(2). He stated that the language proposed to be added to (2) is straight out of the statute and there is no reason to restate statutory language in the rule. It just makes it necessary to read something else and run afoul. This industry is governed by a tremendous number of rules and statutes and being able to find the same language in two different places doesn't seem to serve any purpose.

RESPONSE NO. 6: The use of alcohol such as Mr. Smith identified, specifically used for cleaning his processing equipment is not a problem and no violation would be considered in that regard. 27 C.F.R. 25.24 and 16-1-302, MCA, both address this issue as being acceptable practice.

With regard to Mr. Miller's comment about the language being directly out of statute, the department disagrees with this comment. The department is attempting to clarify that a licensee may only have liquor in the licensed establishment that they are licensed to sell or was purchased through a licensed distribution system.

Additionally, the department is adding the implementation cites of 16-1-302, 16-3-301, and 16-6-303, MCA, to this rule to further clarify these requirements.

COMMENT NO. 7: ARM 42.13.601 - Mr. Smith testified on behalf of both the Montana Small Brewers Association and himself regarding the amendments to this rule. He stated his support for the concept of this rule, but has some questions. He stated that the rule seems to be somewhat vague in how the level of visual screening is needed in order to restrict visibility to the public. If it is the department's intent to work with the licensees to ensure that the patio or deck meets the department's concerns and make it possible to be located on a licensed premises, they would continue to support this proposed rule. Some of the issues that were brought up by members of the association are:

As the rule currently reads, it could be construed that there could be no exit or entrance from the exterior patio area. They believe that this could be an issue of concern for the local fire marshal. In other words, this would seem to not allow for an egress from the area.

In some locations, the statement that it can only be accessed from the sample room may require the current

premises to be altered or remodeled to get to a different wall or area to allow for the patio or deck to be accessed only from the sample room.

It may be in the department's best interest or desire to look at that, and if the enclosed deck or patio configures to the remainder of the licensed premises and the access must be from the inside, the intent of the rule would be accomplished. The association supports the rule, but would suggest some fine-tuning to make it more workable for the brewers.

Mr. Hoffman testified in support of the amendments to ARM 42.13.601, but he indicated that he also had concerns about some of the language. He suggested amending the rule further to help accommodate brewers who may not have a situation where they can put a deck or patio immediately adjacent to their sample room, but may be able to have it adjacent to some other part of the premises.

Mr. Staples testified that the Montana Tavern Association believes that it is important to be careful when amending ARM 42.13.601, which deals with small brewery restrictions. He stated that he had been involved in the process from the beginning with the brewers association. He further stated that open discussions had occurred between both associations and he realizes that the representatives of the Brewers Association get caught from both sides within their own members. There are those in that association that say, "well, you know this is what is practical and what is reasonable" and those that say "lets blow it wide open." He reminded everyone that the bill, which he participated in moving forward from the beginning, referred to an exception for "sample rooms." No one talked about words mentioned during this hearing, such as "the licensed premises." The people that have paid the amounts that they have, and gone through what they have, to obtain a retail on-premises license are going to be very uncomfortable if all of sudden we are talking about a "licensed premises" in connection to a "sample room." This is not a "licensed retail premises"; this is a "sample room." The products that are given and sold in it (sample room), used to be given away free and now can be sold. That is what the idea was, that was what the Brewers Association came and asked for, and that is what everybody agreed to. This is a bit of an expansion, not one that the Montana Tavern Association is going to oppose, but he pointed out that if we keep getting the hard-liners in the brewers business that keep saying we have to have this little thing and that little thing, at some point the tavern members are going to rise up and say, "now wait a minute we have gotten beyond a sample room." We have gotten into an ersatz licensed premises. Except one that didn't pay for the right to do that like everyone else, and is not subject to the other requirements associated with those licenses.

In respect to the concerns about an exit from the patio or
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deck area, let the fire people worry about that. In a movie theater they say emergency exit only, fine, put it on there and it should satisfy the fire issue and it won't have an invitation to come in and come out of that area. This is supposed to be an extension of the "sample room" and if somebody has to alter their premises to accomplish that, our position is, "so be it."

It is not too much to ask to stay within the spirit of what was originally intended, which was to be a sample room exception. If we scatter them around, then we have a brewery, a sample room, and an outdoor bar. If people have to go that extra mile to accomplish this, it should not be too much to ask because it is supposed to be a "sample room" and this patio business is to be "at most" an extension of that sample room, not a retail premises in a brewery.

Mr. Staples stated that Montana has a tiered system and it applies to everyone, including enforcement. Peace can be kept between the two industries if the spirit of the intent is retained regarding a sample room and an "immediate extension" thereof.

RESPONSE NO. 7: The department does not believe that it is in the best interest of the public to amend the rule to allow access to a deck or patio from any other area than the sample room. With regard to Mr. Smith's concern about the egress issue from the patio or deck area being a concern of the local fire marshal, the department does not have the expertise to determine if that would be the case. That issue should be discussed with the local fire marshal when obtaining approval for other standards of suitability. If an egress "exit" is necessary, in order to meet building codes, the department would not object. The intent of the rule is to provide access into the deck and patio area only from the sample room area. Exit for emergency purposes is not addressed in the rule. The department would recommend all applicants check with the local fire and building code officials to determine the necessary fire exit requirements for enclosed decks and patios.

3. The department has amended ARM 42.13.103, 42.13.105, 42.13.107, 42.13.108, 42.13.109, 42.13.222, 42.13.304, 42.13.305, 42.13.401, 42.13.402 and 42.13.601 as proposed.

4. As a result of the comments received, the department has amended ARM 42.13.101, 42.13.106, 42.13.201, 42.13.221, 42.13.301 with the following changes:

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) through (3) remain the same.

(4) ~~THE DEPARTMENT WILL NOT CONSIDER Reinstatement REINSTATEMENT of a revoked license pursuant to this rule will not be considered until the number of violations in a three-year period from the effective date of revocation totals three years or less, but in no event less than~~ FOR one year FROM THE DATE OF

REVOCATION. In every case, reinstatement will only be allowed if:

(a) the licensee demonstrates to the department that the licensee has taken steps to insure the causes of the license revocation will be prevented from occurring IN THE FUTURE; and

(b) a license is available under the quota.

(5) through (11) remain the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-3-301, 16-4-406, 16-6-305, and 16-6-314, MCA

42.13.106 CHANGE OR ALTERATION IN PREMISES (1) and (2) remain the same.

(3) UPON RECEIPT OF THE ALTERATION QUESTIONNAIRE AND ALL SUPPORTING DOCUMENTATION, THE DEPARTMENT WILL ADVISE THE LICENSEE WITHIN SEVEN WORKING DAYS OF APPROVAL OR DENIAL TO PROCEED WITH THE ALTERATION.

(3) through (6) remain the same, but are renumbered (4) through (7).

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-1-303, and ~~Title 16, chapter 4, 16-3-311 and 16-4-402~~, MCA

42.13.201 LABELING REQUIREMENTS (1) No licensee shall sell, offer for sale, or deliver any liquor (distilled spirits, wine, or malt beverages) unless the containers thereof are marked, branded, or labeled in conformity with this rule and ARM 42.13.221.

(2) Alcohol content by weight must be noted on the labels of all malt beverages sold or manufactured in Montana, except this rule shall not apply to beer THAT containings less NOT MORE than 7% alcohol by weight.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-1-102, 16-1-106, and 16-1-303, MCA

42.13.221 ADOPTION OF CERTAIN FEDERAL REGULATIONS

(1) remains the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-1-201, 16-3-103 and 16-3-244, MCA

42.13.301 STORAGE OF ALCOHOLIC BEVERAGES (1) and (2) remain the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-1-302, 16-3-201, 16-3-301, 16-6-301, and 16-6-303, MCA

5. Therefore, the department adopts the rules with the amendments listed above.

6. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana

Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State August 19, 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 June 30, 2002. This table includes those rules adopted during the period July 1, 2002 through September 30, 2002 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2002, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2001 and 2002 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

2.5.120 and other rules - State Procurement of Supplies and Services, p. 2037

8.94.4104 and other rules - Transfer from the Department of Commerce - Single Audit Act, p. 2045

(Public Employees' Retirement Board)

I Family Law Orders for the Public Employees' Retirement System Defined Contribution Retirement Plan Administered by the Public Employees' Retirement Board, p. 2052

I Purchase of Service Credit through Direct Trustee-to-Trustee Transfers, p. 1154, 1889

I-III Qualified Domestic Relations Orders for the Deferred Compensation (457) Plan Administered by the Public Employees' Retirement Board, p. 1612, 2185

I-III Deferred Compensation Plan Administered by the Public Employees' Retirement Board, p. 1150, 1893

I-X Deferred Retirement Option Plan (DROP) for Members of the Municipal Police Officers' Retirement System, p. 1118, 1891

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in July 2002, appear. Vacancies scheduled to appear from September 1, 2002, through November 30, 2002, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of August 2, 2002.

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

BOARD AND COUNCIL APPOINTEES FROM JULY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Aging Advisory Council (Public Health and Human Services)			
Ms. Dorothea C. Neath Helena	Governor	reappointed	7/18/2002 7/18/2005
Qualifications (if required): public member			
Ms. Pauline Nikolaisen Kalispell	Governor	reappointed	7/18/2002 7/18/2005
Qualifications (if required): public member			
Ms. Mary Alice Rehbein Lambert	Governor	reappointed	7/18/2002 7/18/2005
Qualifications (if required): public member			
Mr. Wilbur Swenson Havre	Governor	reappointed	7/18/2002 7/18/2005
Qualifications (if required): public member			
Board of Crime Control (Governor)			
Mr. Godfrey Saunders Bozeman	Governor	Lockyer	7/19/2002 1/1/2005
Qualifications (if required): educator			
Board of Funeral Service (Labor and Industry)			
Mr. Niles Nelson Libby	Governor	reappointed	7/2/2002 7/1/2007
Qualifications (if required): licensed mortician			
Ms. Jean Ruppert Butte	Governor	reappointed	7/2/2002 7/1/2007
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JULY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Funeral Service (Labor and Industry) cont. Mr. Jered Scherer Billings Qualifications (if required): cemetarian	Governor	reappointed	7/2/2002 7/1/2007
Board of Hearing Aid Dispensers (Labor and Industry) Mr. John Delano Helena Qualifications (if required): public member who uses a hearing aid	Governor	reappointed	7/18/2002 7/1/2005
Ms. Susan Kalarchik Butte Qualifications (if required): licensed hearing aid dispenser with national certification in audiology	Governor	Moore	7/18/2002 7/1/2005
Board of Nursing (Labor and Industry) Ms. Lorena Erickson Corvallis Qualifications (if required): public member	Governor	reappointed	7/3/2002 7/1/2006
Ms. Karen Pollington Havre Qualifications (if required): registered professional nurse	Governor	Harding	7/3/2002 7/1/2006
Ms. Jeanine Thomas Ronan Qualifications (if required): licensed practical nurse	Governor	reappointed	7/3/2002 7/1/2006
Board of Nursing Home Administrators (Labor and Industry) Mr. Tom Miller Helena Qualifications (if required): public member	Governor	Chaffin	7/30/2002 5/28/2006

BOARD AND COUNCIL APPOINTEES FROM JULY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Pharmacy (Labor and Industry) Ms. Ann H. Pasha Highwood Qualifications (if required): public member	Governor	Lersbak	7/31/2002 7/1/2007
Board of Physical Therapy Examiners (Labor and Industry) Mr. Jeff Swift Great Falls Qualifications (if required): physical therapist	Governor	reappointed	7/18/2002 7/1/2005
Board of Private Security Patrol Officers and Investigators (Labor and Industry) Ms. Kathy Miller Helena Qualifications (if required): public member	Governor	Britton	7/30/2002 8/1/2005
Dr. Raymond C. Murray Missoula Qualifications (if required): representative of the Peace Officers Standards and Training Advisory Council	Governor	reappointed	7/30/2002 8/1/2005
Board of Professional Engineers and Land Surveyors (Labor and Industry) Mr. Denis Applebury Victor Qualifications (if required): professional surveyor	Governor	Ainsworth	7/5/2002 7/1/2006
Ms. Janet Markle Glasgow Qualifications (if required): public member	Governor	reappointed	7/5/2002 7/1/2006
Mr. Steve Wright Columbia Falls Qualifications (if required): professional engineer	Governor	reappointed	7/5/2002 7/1/2006

BOARD AND COUNCIL APPOINTEES FROM JULY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Public Accountants (Labor and Industry)			
Ms. Kathleen M. Burch Lakeside	Governor	Paul	7/5/2002 7/1/2007
Qualifications (if required):	public member		
Board of Radiologic Technologists (Labor and Industry)			
Ms. Jackie Barnes Helena	Governor	Sanford	7/29/2002 7/1/2005
Qualifications (if required):	permit holder		
Ms. Carole Erickson Missoula	Governor	Sevier	7/29/2002 7/1/2005
Qualifications (if required):	public member		
Dr. Dennis Palmer Helena	Governor	reappointed	7/29/2002 7/1/2005
Qualifications (if required):	radiologist		
Mr. John Rosenbaum Havre	Governor	Finch	7/29/2002 7/1/2005
Qualifications (if required):	radiologic technologist		
Board of Sanitarians (Labor and Industry)			
Mr. John Shea Missoula	Governor	reappointed	7/3/2002 7/1/2005
Qualifications (if required):	public member		
Committee on Telecommunications Access Services for Persons with Disabilities (Governor)			
Ms. Char Harasymczuk Billings	Governor	Hippe	7/18/2002 7/1/2005
Qualifications (if required):	deaf		

BOARD AND COUNCIL APPOINTEES FROM JULY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Committee on Telecommunications Access Services for Persons with Disabilities (Governor) cont.			
Mr. Jack Sterling Billings	Governor	reappointed	7/18/2002 7/1/2005
Qualifications (if required): representative of an independent local exchange company			
Mr. Edward Van Tighem Great Falls	Governor	reappointed	7/18/2002 7/1/2005
Qualifications (if required): deaf			
Department of Corrections Advisory Council (Corrections)			
Mr. Marty Lambert Bozeman	Governor	Wilson	7/29/2002 11/13/2003
Qualifications (if required): public member			
Family Education Savings Oversight Committee (Commissioner of Higher Education)			
Mr. Frank D'Angelo Missoula	Governor	Meyer	7/29/2002 7/1/2006
Qualifications (if required): public member			
Mr. Scott Darkenwald Helena	Governor	Ranf	7/29/2002 7/1/2004
Qualifications (if required): state treasurer			
Mr. Richard Roehm Bozeman	Governor	Thompson	7/29/2002 7/1/2003
Qualifications (if required): representative of the Board of Regents			
Mental Disabilities Board of Visitors (Governor)			
Mr. Steve Cahill Clancy	Governor	reappointed	7/29/2002 7/1/2004
Qualifications (if required): experienced with the welfare of the mentally ill			

BOARD AND COUNCIL APPOINTEES FROM JULY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Mental Disabilities Board of Visitors (Governor) cont.			
Ms. Joan-Nell Macfadden Great Falls	Governor	reappointed	7/29/2002 7/1/2004
Qualifications (if required):	experienced with emotionally disturbed children		
Mr. Graydon Davies Moll Polson	Governor	reappointed	7/29/2002 7/1/2004
Qualifications (if required):	experienced with developmentally disabled adults		
Montana Agriculture Development Council (Agriculture)			
Mr. Earl Bricker Moore	Governor	Snortland	7/29/2002 7/1/2005
Qualifications (if required):	engaged in agriculture		
Ms. Cathy Cottom Dillon	Governor	Lake	7/29/2002 7/1/2005
Qualifications (if required):	engaged in agriculture		
Mr. Robert Hanson White Sulphur Springs	Governor	reappointed	7/29/2002 7/1/2005
Qualifications (if required):	engaged in agriculture		
Montana Consensus Council (Governor)			
Mr. LeRoy Not Afraid Crow Agency	Governor	Forest	7/18/2002 6/30/2003
Qualifications (if required):	public member and a Native American		
Mr. Brad Powell Missoula	Governor	Millenbach	7/18/2002 6/30/2003
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM JULY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Mint Committee (Agriculture)			
Mr. Clyde Fisher	Governor	reappointed	7/1/2002
Columbia Falls			7/1/2005
Qualifications (if required): representative of the mint industry research council			
Mr. Kirk Passmore	Governor	Ficken	7/1/2002
Kalispell			7/1/2005
Qualifications (if required): mint grower			
Montana Organic Commodity Advisory Council (Agriculture)			
Mr. Robert Boettcher	Director	not listed	7/29/2002
Big Sandy			7/29/2003
Qualifications (if required): producer			
Mr. John Hoffland	Director	not listed	7/29/2002
Helena			7/29/2004
Qualifications (if required): consumer			
Mr. Mikel Lund	Director	not listed	7/29/2002
Scobey			7/29/2004
Qualifications (if required): producer			
Ms. Nancy Matheson	Director	not listed	7/29/2002
Helena			7/29/2004
Qualifications (if required): producer			
Mr. David Oien	Director	not listed	7/29/2002
Conrad			7/29/2003
Qualifications (if required): handler			
Ms. Judy Owsowitz	Director	not listed	7/29/2002
Whitefish			7/29/2003
Qualifications (if required): producer			

BOARD AND COUNCIL APPOINTEES FROM JULY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Organic Commodity Advisory Council (Agriculture) cont.			
Mr. Robert Quinn	Director	not listed	7/29/2002
Big Sandy			7/29/2003
Qualifications (if required):	producer		
Petroleum Tank Release Compensation Board (Enviornmental Quality)			
Mr. Barry Johnston	Governor	Cockhill	7/18/2002
Bigfork			6/30/2005
Qualifications (if required):	representative of the banking industry		
Mr. Daniel Manson	Governor	reappointed	7/18/2002
Butte			6/30/2005
Qualifications (if required):	attorney		
State Banking Board (Administration)			
Mr. Max Agather	Governor	reappointed	7/18/2002
Kalispell			7/1/2005
Qualifications (if required):	public member		
Mr. Wayne Edwards	Governor	reappointed	7/18/2002
Denton			7/1/2005
Qualifications (if required):	state bank officer of a small sized bank		
State Compensation Insurance Fund Board of Directors (Administration)			
Mr. Mark Cole	Governor	Cope	7/29/2002
Shelby			4/28/2005
Qualifications (if required):	policyholder and representing private enterprise		
State Electrical Board (Labor and Industry)			
Ms. Vicke Larson	Governor	Glimm	7/1/2002
Havre			7/1/2007
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM JULY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Teachers' Retirement Board (Administration)			
Ms. Emily Hall Bogut	Governor	reappointed	7/2/2002
Kalispell			7/1/2007
Qualifications (if required): active teacher and a member of the retirement system			
Tourism Advisory Council (Commerce)			
Mr. Scott Asche	Governor	Bourque-Moss	7/18/2002
Bozeman			7/1/2005
Qualifications (if required): representative of Yellowstone Country			
Ms. A. Ramona Holt	Governor	reappointed	7/18/2002
Lolo			7/1/2005
Qualifications (if required): representative of Glacier Country			
Ms. Michele Reese	Governor	reappointed	7/18/2002
Whitefish			7/1/2005
Qualifications (if required): representative of Glacier Country			
Mr. Mike Scholz	Governor	McCamley	7/18/2002
Big Sky			7/1/2005
Qualifications (if required): representative of the Montana Innkeepers Association			
Ms. Carolyn B. Valacich	Governor	Dompier	7/18/2002
Great Falls			7/1/2005
Qualifications (if required): representative of Russell Country			
Mr. George Willett	Governor	Flynn	7/18/2002
Neihart			7/1/2005
Qualifications (if required): representative of Russell Country			

BOARD AND COUNCIL APPOINTEES FROM JULY 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice)			
Reverend Steven Rice	Governor	McCall	7/1/2002
Miles City			6/15/2003
Qualifications (if required):	public member		

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2002 through NOVEMBER 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
AIDS Advisory Council (Public Health and Human Services) Mr. Jesse Sherratt, Helena Qualifications (if required): student representative	Governor	11/15/2002
Alternative Health Care Board (Commerce) Ms. Ann H. Pasha, Highwood Qualifications (if required): public member	Governor	9/1/2002
Ms. Kathee Dunham, Arlee Qualifications (if required): direct midwife	Governor	9/1/2002
Board of Medical Examiners (Commerce) Mr. David B. Huebner, Great Falls Qualifications (if required): licensed podiatrist	Governor	9/1/2002
Dr. Donald Grewell, Billings Qualifications (if required): doctor of osteopathy	Governor	9/1/2002
Dr. Anne M. Williams, Glasgow Qualifications (if required): doctor of medicine	Governor	9/1/2002
Board of Outfitters (Commerce) Ms. Jennifer J. Cote, Missoula Qualifications (if required): sportsperson	Governor	10/1/2002
Mr. Wayne L. Underwood, Billings Qualifications (if required): sportsperson	Governor	10/1/2002
Mr. Mel Montgomery, Lima Qualifications (if required): big game outfitter	Governor	10/1/2002
Mr. Leslie K. Dolezal, Billings Qualifications (if required): public member	Governor	10/1/2002

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2002 through NOVEMBER 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Psychologists (Commerce) Mr. Mike Mallowney, Absarokee Qualifications (if required): public member	Governor	9/1/2002
Building Codes Council (Commerce) Mr. Fred Flanders, Helena Qualifications (if required): representative of the public	Governor	10/1/2002
Mr. Daniel Prill, Great Falls Qualifications (if required): practicing professional engineer	Governor	10/1/2002
Mr. Robert J. Karhu, Helena Qualifications (if required): practicing architect	Governor	10/1/2002
Mr. Mike Skinner, Helena Qualifications (if required): representative of the manufactured housing industry	Governor	10/1/2002
Mr. Joe Wolfe, Helena Qualifications (if required): representative of the State Electrical Board	Governor	10/1/2002
Mr. Terry Phillips, Helena Qualifications (if required): state fire marshal	Governor	10/1/2002
Mr. Derek J. Brown, Helena Qualifications (if required): representative of the home building industry	Governor	10/1/2002
Mr. Dick Grover, Missoula Qualifications (if required): representative of the state Board of Plumbers	Governor	10/1/2002
Mr. Jeffrey Jenkins, Great Falls Qualifications (if required): municipal building inspector	Governor	10/1/2002

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2002 through NOVEMBER 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Building Codes Council (Commerce) cont. Mr. Joe Hansen, Bozeman Qualifications (if required): representative of the building contractor industry	Governor	10/1/2002
Mr. Howard Reid, Helena Qualifications (if required): representative of the Department of Public Health and Human Services	Governor	10/1/2002
Disability Advisory Council (Administration) Ms. Katherine Kountz, Helena Qualifications (if required): ex-officio member	Governor	11/14/2002
Family Support Services Advisory Council (Public Health and Human Services) Mr. Mike Cooney, Helena Qualifications (if required): representing Healthy Mothers/Healthy Babies	Governor	9/27/2002
Ms. Sylvia Danforth, Miles City Qualifications (if required): representative of provider/Part C Agency	Governor	9/27/2002
Mr. Ted Maloney, Missoula Qualifications (if required): representative at large	Governor	9/27/2002
Mr. Dan McCarthy, Helena Qualifications (if required): agency representative/preschool specialist/SEA	Governor	9/27/2002
Ms. Sandi Marisdotter, Helena Qualifications (if required): provider/Part C Agency	Governor	9/27/2002
Ms. Sue Forest, Missoula Qualifications (if required): representative of personnel preparation	Governor	9/27/2002
Ms. Cris Volinkaty, Missoula Qualifications (if required): provider/Part C Agency	Governor	9/27/2002

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2002 through NOVEMBER 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont. Ms. Barbara Stefanic, Laurel Qualifications (if required): LEA representative for special education co-operatives	Governor	9/27/2002
Mr. John Holbrook, Helena Qualifications (if required): agency representative/State Insurance Commissioner	Governor	9/27/2002
Ms. Jackie Jandt, Helena Qualifications (if required): agency representative/mental health	Governor	9/27/2002
Ms. Sharon Wagner, Helena Qualifications (if required): representative/Special Health Services	Governor	9/27/2002
Ms. Millie Kindle, Malta Qualifications (if required): representative of Parent Region I	Governor	9/27/2002
Sen. Gerald Pease, Lodge Grass Qualifications (if required): legislator and representative of Parent Region II	Governor	9/27/2002
Ms. Lynda Korth, Helena Qualifications (if required): representative/Child and Family Services	Governor	9/27/2002
Rep. Mary Anne Guggenheim, Helena Qualifications (if required): representative of medical/health care services	Governor	9/27/2002
Ms. Patti Russ, Helena Qualifications (if required): agency representative/child care	Governor	9/27/2002
Ms. Liz Harter, Helena Qualifications (if required): agency representative/State Insurance Commissioner	Governor	9/27/2002
Ms. Kelly Johnson, Kalispell Qualifications (if required): representative of parents at large	Governor	9/27/2002

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2002 through NOVEMBER 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont. Ms. Ann Marie Johnson, Missoula Qualifications (if required): representative of Head Start	Governor	9/27/2002
Ms. Lucy Hart-Paulson, Missoula Qualifications (if required): therapist representative	Governor	9/27/2002
Ms. Sandy McGennis, Great Falls Qualifications (if required): representative of providers	Governor	9/27/2002
Ms. Denise King, Helena Qualifications (if required): agency representative/EPST	Governor	9/27/2002
Ms. Gwen Beyer, Missoula Qualifications (if required): representative of Parent Region V	Governor	9/27/2002
Ms. Phyllis Astheimer, Bozeman Qualifications (if required): family support specialist	Governor	9/27/2002
Mr. Brian Lenhardt, Havre Qualifications (if required): parent representative from Region II	Governor	9/27/2002
Ms. Rene Lenhardt, Havre Qualifications (if required): parent representative from Region II	Governor	9/27/2002
Ms. Shelley Korth, Helena Qualifications (if required): parent representative from Region IV	Governor	9/27/2002
Mr. Jay Korth, Helena Qualifications (if required): parent representative from Region IV	Governor	9/27/2002
Ms. Novelene Martin, Miles City Qualifications (if required): DDP Field Services Specialist representative	Governor	9/27/2002

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2002 through NOVEMBER 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Advisory Council on Disability (Administration) Ms. June Hermanson, Billings Qualifications (if required): public member	Governor	11/14/2002
Ms. Ladonna Fowler, Polson Qualifications (if required): public member	Governor	11/14/2002
Ms. Mary Morrison, Missoula Qualifications (if required): public member	Governor	11/14/2002
Mr. Michael Regnier, Missoula Qualifications (if required): public member	Governor	11/14/2002
Ms. Shelley Laing, Kalispell Qualifications (if required): public member	Governor	11/14/2002
Mr. Gene Haire, Helena Qualifications (if required): public member	Governor	11/14/2002
Mr. David Diehl, East Helena Qualifications (if required): public member	Governor	11/14/2002
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) Mr. Frank Gary, Butte Qualifications (if required): public member	Governor	11/15/2002
Mr. Steven C. Yeakel, Helena Qualifications (if required): public member	Governor	11/15/2002
Ms. Verbena Savior, Poplar Qualifications (if required): Native American	Governor	11/15/2002

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2002 through NOVEMBER 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) cont. Mr. David Herrera, Billings Qualifications (if required): public member	Governor	11/15/2002
Ms. Rita Munzenrider, Missoula Qualifications (if required): public member	Governor	11/15/2002
Ms. Teresa Louise Dunn, Whitefish Qualifications (if required): public member	Governor	11/15/2002
Sen. John Bohlinger, Billings Qualifications (if required): legislator	Governor	11/15/2002
Mr. Kevin Petersen, Clancy Qualifications (if required): public member	Governor	11/15/2002
Mr. Fred Zaino, Conrad Qualifications (if required): public member	Governor	11/15/2002
Ms. Kim Ackerman, Helena Qualifications (if required): public member	Governor	11/15/2002
Ms. Annie Tavary, Helena Qualifications (if required): public member	Governor	11/15/2002
Mr. Jack Preston, Lincoln Qualifications (if required): public member	Governor	11/15/2002
Mr. Jeff Lovely, Helena Qualifications (if required): public member	Governor	11/15/2002
Sister Mary Vincentia Maronick, Billings Qualifications (if required): public member	Governor	11/15/2002

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2002 through NOVEMBER 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historical Society Preservation Review Board (Historical Society) Ms. Theo Hugs, Fort Smith Qualifications (if required): historian	Governor	10/1/2002
Mr. Douglas Johnson, Hamilton Qualifications (if required): administrator of historic property	Governor	10/1/2002
Lewis and Clark Bicentennial Commission (Historical Society) Mr. Darrell Kipp, Browning Qualifications (if required): member of a Montana Indian tribe	Governor	10/1/2002
Ms. Betty Stone, Glasgow Qualifications (if required): public member	Governor	10/1/2002
Mr. Homer Staves, Billings Qualifications (if required): public member	Governor	10/1/2002
Montana Historical Records Advisory Council (Historical Society) Ms. Molly Miller, Helena Qualifications (if required): acting state archivist	Governor	10/18/2002
Ms. Anne L. Foster, Huntley Qualifications (if required): public member	Governor	10/18/2002
Ms. Ellen Crain, Butte Qualifications (if required): public member	Governor	10/18/2002
Ms. Jodi L. Allison-Bunnell, Missoula Qualifications (if required): public member	Governor	10/18/2002
Ms. Kathy Mosdal O'Brien, Billings Qualifications (if required): public member	Governor	10/18/2002

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2002 through NOVEMBER 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Historical Records Advisory Council (Historical Society) cont. Mr. Kim Allen Scott, Bozeman Qualifications (if required): public member	Governor	10/18/2002
Ms. Judy Ellinghausen, Great Falls Qualifications (if required): public member	Governor	10/18/2002
Ms. Lory Morrow, Helena Qualifications (if required): public member	Governor	10/18/2002
Noxious Weed Seed Free Forage Advisory Council (Agriculture) Mr. W. Ralph Peck, Helena Qualifications (if required): director	Director	10/11/2002
Mr. Harry Woll, Kalispell Qualifications (if required): forage producer	Director	10/11/2002
Mr. LaMonte Schnur, Townsend Qualifications (if required): forage producer	Director	10/11/2002
Mr. Don Walker, Glendive Qualifications (if required): forage producer	Director	10/11/2002
Mr. Dennis Perry, Choteau Qualifications (if required): feed pellets/cubes products	Director	10/11/2002
Mr. Bob McNeill, Dillon Qualifications (if required): outfitters and guides	Director	10/11/2002
Mr. Dennis Cash, Bozeman Qualifications (if required): ex officio	Director	10/11/2002

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2002 through NOVEMBER 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont. Mr. Ray Ditterline, Bozeman Qualifications (if required): ex officio	Director	10/11/2002
Mr. Clay Williams, Livingston Qualifications (if required): weed districts	Director	10/11/2002
Mr. Wayne Maughn, Fort Benton Qualifications (if required): livestock/agriculture	Director	10/11/2002
Ms. Marcy Mack, Pablo Qualifications (if required): weed districts	Director	10/11/2002
Small Business Compliance Assistance Advisory Council (Environmental Quality) Ms. Sandy Newton, Helena Qualifications (if required): public member	Governor	10/1/2002
Ms. Karen Williams, Helena Qualifications (if required): public member	Governor	10/1/2002
Water and Waste Water Operators' Advisory Council (Environmental Quality) Mr. Roger Thomas, Billings Qualifications (if required): wastewater treatment plant operator	Governor	10/16/2002