

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed)	NOTICE OF
adoption of New Rules I and II))	PROPOSED ADOPTION
pertaining to prohibition of)	
discretionary clauses in)	NO PUBLIC HEARING
insurance policy forms)	CONTEMPLATED

TO: All Concerned Persons

1. On May 8, 2003, the State Auditor in his capacity as commissioner of insurance proposes to adopt Rules I and II pertaining to the disapproval of insurance policy forms containing discretionary clauses.

2. The State Auditor's Office 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 State Auditor's Office no later than 5:00 p.m., on April 28, 2003, to advise us of the nature of the accommodation that you need. Please contact Pamela Weitz, State Auditor's Office, 840 Helena Ave., Helena, MT 59601; telephone (406) 444-1744; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497 or e-mail to pweitz@state.mt.us.

3. The proposed new rules provide as follows:

RULE I PURPOSE AND INTENT (1) The purpose of [Rule II] is to assure that health, life and disability income insurance contracts do not contain language that is contrary to settle principles of construction and interpretation applicable to all insurance contracts.

AUTH: 33-1-313, 33-15-304, MCA
IMP: 33-1-501, 33-1-502, MCA

RULE II DISCRETIONARY CLAUSES SUBJECT TO DISAPPROVAL

(1) In accordance with the provisions in 33-1-501 and 33-1-502, MCA, a policy, contract, certificate or agreement offered or issued in this state that provides for health, life or disability income benefits and that contains a provision purporting to reserve discretion to the insurance issuer, health service corporation, or health maintenance organization, to interpret or apply the terms of the contract, or to provide standards of interpretation or review that are inconsistent with the laws of this state is subject to disapproval by the commissioner.

(2) After July 1, 2003, all policies, contracts or agreements containing the provision described in (1) will be disapproved by the commissioner. Any insurance carrier, health maintenance organization or health service organization

that currently has a policy, contract or agreement containing a provision in violation of this rule must refile the policy, contract or agreement striking such a provision with the commissioner by July 1, 2003. Alternatively, an endorsement striking a clause subject to the commissioner's review under this rule must be filed with the commissioner no later than July 1, 2003.

AUTH: 33-1-313, 33-15-304, MCA
IMP: 33-1-501, 33-1-502, MCA

4. REASONABLE NECESSITY STATEMENT: New Rules I and II are actually the revised republication of a Rule published on September 26, 2002, at page 2486 of the 2002 Montana Administrative Register, issue no. 18. A hearing was held on that proposed Rule on November 6, 2002. In light of the comments received on that proposed Rule, the commissioner decided to propose new language addressing the disapproval of discretionary clauses in insurance contracts.

New Rule I is necessary in order to explain the purpose and intent of proposed Rule II. New Rule II is intended to address clauses in insurance contracts commonly referred to as "discretionary clauses." Such clauses are generally contained in employee benefit plans subject to the Employee Retirement Income Security Act of 1974 (ERISA), and purport to reserve to the insurance carrier full discretion in determining when benefits are due.

Sample provisions of discretionary clauses include the following:

"Insurer has full discretion and authority to determine the benefits and amounts payable to construe and interpret all terms and provisions of the plan."

"Insurer has full, exclusive and discretionary authority to determine all questions arising in connection with this policy, including its interpretation."

"Insurer is granted the sole discretionary authority to determine eligibility, make all factual determinations and to construe all terms of the policy."

"Insurer shall have full, final and conclusive discretionary authority to determine all questions and issues regarding the administration and interpretation of the policy. This discretionary authority shall include, but is not limited to, all determinations by insurer which shall be considered conclusive and binding on all insured persons."

Under well-established Montana case law, an insurance policy is subject to the same rules of interpretation and construction as other contracts, including such matters as the de novo review by a district court of the denial of benefits. If a policy is ambiguous, any ambiguity must be construed in favor of the insured and against the insurer. Wendell v. State Farm Insurance, 1999 MT 11117, 974 p.2d 623, 293 Mont.

140; Farmers Alliance Mutual Ins. Co. v. Holeman, 1998 MT 155, 961 p.2d 114, 289 Mont. 312. Discretionary clauses are contrary to this well-established principle governing the interpretation of insurance contracts. Disapproval of such clauses is, therefore, appropriate under 33-1-502, MCA, as regulation of the insurance business.

Discretionary clauses have been disapproved by a number of states because they inappropriately deprive courts of jurisdiction to review insurance contract provisions de novo. In South Dakota, Kansas and Florida, such clauses are disapproved because the language misleads insureds about their right to bring an action or litigate a claim dispute. Illinois disapproves such clauses because they reflect a conflict of interest and are repugnant to public policy.

Discretionary clauses fall within the commissioner's form review and disapproval authority in 33-1-501 and 33-1-502, MCA, as regulation of the insurance business. Under 33-1-502, MCA, disapproval of discretionary clauses is warranted because such clauses are contrary to well-established Montana insurance law and are therefore misleading, ambiguous, and deceptively affect the risk purported to be assumed.

Questions arose in the prior publication of the proposed rule concerning its application to property and casualty insurance contracts. As discussed above, the intent of Rule II is to address contractual provisions generally found in ERISA insurance contracts. They were put into ERISA contracts when there was a question regarding state regulation of such provisions. The commissioner believes those questions have been resolved and it is important to clarify that such provisions will no longer be approved, and the prior approval of such provisions will be withdrawn. Such provisions are not, to the commissioner's knowledge, found in property and casualty contracts, and would not be approved in such contracts, because they would be contrary to current Montana case law.

Proposed Rule II is based upon the National Association of Insurance Commissioners model act, except that the prohibition includes life and disability policies or contracts rather than just health insurance contracts.

5. Concerned persons may submit their data, views or arguments concerning the proposed rules in writing to Pam Weitz, State Auditor's Office, 840 Helena Ave., Helena, MT 59601; or e-mail to pweitz@state.mt.us, to be received no later than April 28, 2003.

6. If persons who are directly affected by the proposed adoption wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Pam Weitz, State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, or by e-mail to pweitz@state.mt.us. A written request for hearing must be received no later than 5:00 p.m., on April 28, 2003.

7. If the State Auditor's Office receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected have been determined to be 25 persons based on the interested parties list.

8. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written requests may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, faxed to (406) 444-3497, e-mailed to dsautter@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

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

JOHN MORRISON, State Auditor
and Commissioner of Insurance

By: Angela Huschka
Angela Huschka
Deputy Insurance Commissioner

By: Elizabeth L. Griffing
Elizabeth L. Griffing
Rules Reviewer

Certified to the Secretary of State on March 17, 2003.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING
proposed amendment of ARM) ON PROPOSED AMENDMENT
10.57.218 regarding renewal)
unit verification)

TO: All Concerned Persons

1. On April 22, 2003 at 9:00 a.m. a public hearing will be held at the Office of the Commissioner of Higher Education, Room 142, 2500 Broadway, Helena, Montana, to consider the amendment of a rule relating to renewal unit verification.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on April 14, 2003 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@bpe.Montana.edu.

3. Statement of Reasonable Necessity: The Board of Public Education has determined that it is reasonable and necessary to amend ARM 10.57.218 to allow on-line renewal of teacher licenses. The rule establishes a procedure for auditing renewals to determine compliance with the renewal unit requirements.

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

10.57.218 RENEWAL UNIT VERIFICATION (1) Applications to the superintendent of public instruction for license renewal shall be ~~accompanied by verification of meeting the professional development requirements through official documentation (transcripts or grade reports) from an accredited college or university, or verification of renewal units.~~ include a listing of the activities completed for renewal as required by ARM 10.57.215. The educator is responsible for maintaining official documentation verifying completion of renewal activities during the term of the license.

(2) The superintendent of public instruction may conduct an audit of any renewal applications submitted. Those persons selected for audit will be required to submit verification of meeting the professional development requirements through official documentation (official transcripts, original grade reports or original renewal unit certificates).

(3) If an educator is unable to produce verification of renewal unit activities within 60 days from the date of the

audit letter, the educator's license may be suspended or revoked by the board of public education.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-108, MCA

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@bpe.Montana.edu and must be received no later than 5:00 p.m. on April 24, 2003.

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

7. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this 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 Board of Public Education rulemaking actions. Such written request may be mailed or delivered to Steve Meloy, P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847, or by e-mail to smeloy@bpe.Montana.edu, or may be made by completing a request form at any rules hearing held by the Board of Public Education.

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

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

/s/ Steve Meloy
Steve Meloy
Rule Reviewer
Board of Public Education

Certified to the Secretary of State March 17, 2003.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
proposed amendment of ARM	)	AMENDMENT
10.57.410, 10.57.411 and)	
10.57.413 relating to	)	NO PUBLIC HEARING
educator licensure	)	CONTEMPLATED

TO: All Concerned Persons

1. On April 28, 2003, the Board of Public Education proposes to amend ARM 10.57.410, 10.57.411 and 10.57.413 relating to educator licensure.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on April 14, 2003 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@bpe.Montana.edu.

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

10.57.410 CLASS 2 STANDARD TEACHER'S LICENSE

(1) through (4) remain the same.

~~(5) An educator who has not earned renewal units as provided in (4)(a) and (b) and who wishes to reinstate his/her lapsed license must comply with the requirements of ARM 10.57.201 and 10.57.220.~~

AUTH: Sec. 20-2-121, 20-4-102, MCA

IMP: Sec. 20-4-102, 20-4-103, 20-4-106, 20-4-108, MCA

10.57.411 CLASS 1 PROFESSIONAL TEACHER'S LICENSE

(1) through (4) remain the same.

~~(5) An educator who has not earned renewal units as provided in (4)(a) and (b) and who wishes to reinstate his/her lapsed license must comply with the requirements of ARM 10.57.201 and 10.57.220.~~

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

10.57.413 CLASS 3 ADMINISTRATIVE LICENSE

(1) through (4) remain the same.

~~(5) An administrator who has not earned renewal units as provided in (4)(a) and (b) and who wishes to reinstate his/her lapsed license must comply with the requirements of ARM 10.57.201 and 10.57.220.~~

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

Statement of Reasonable Necessity: The Board of Public Education finds it reasonable and necessary to amend these rules to eliminate section (5) in all three rules. This section is not necessary and has created confusion in the education community.

4. Concerned persons may present their data, views or arguments concerning the proposed amendment in writing to Steve Meloy, Executive Secretary of the Board of Public Education, P.O. Box 200601, Helena, MT 59620-0601 or by e-mail to smeloy@bpe.montana.edu to be received no later than 5:00 p.m. on April 24, 2003.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Steve Meloy, Executive Secretary of the Board of Public Education, P.O. Box 200601, Helena, MT 59620-0601 or by e-mail to smeloy@bpe.Montana.edu. A written request for hearing must be received no later than 5:00 p.m. on April 24, 2003.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2600 persons based on 26,000 licensed educators in the State of Montana.

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

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

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

/s/ Steve Meloy
Steve Meloy
Rule Reviewer
Board of Public Education

Certified to the Secretary of State March 17, 2003.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PUBLIC HEARING ON
of ARM 17.56.101, 17.56.102,	)	PROPOSED AMENDMENT AND
17.56.201, 17.56.202, 17.56.221,	)	REPEAL
17.56.301, 17.56.302, 17.56.304,)	
17.56.305, 17.56.308, 17.56.309,	)	(UNDERGROUND STORAGE TANKS)
17.56.401, 17.56.402, 17.56.407,)	
17.56.408, 17.56.409, 17.56.502,)	
17.56.504, 17.56.602, 17.56.604,)	
17.56.902, 17.56.1301,)	
17.56.1304, 17.56.1305 and)	
17.56.1402 and the repeal of)	
17.56.103 pertaining to)	
underground storage tanks, and)	
the repeal of 17.56.1101 through)	
17.56.1104 pertaining to)	
Petroleum Storage Tank Release)	
Compensation)	

TO: All Concerned Persons

1. On April 23, 2003, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in the Lewis Room of the Phoenix Building, 2209 Phoenix Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., April 14, 2003, to advise us of the nature of the accommodation that you need. Please contact Helenann Cannon, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-0479; fax (406) 444-1901; or email hcannon@state.mt.us.

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

17.56.101 DEFINITIONS For the purposes of this chapter and unless otherwise provided, the following terms have the meanings given to them in this rule and must be used in conjunction with those definitions in ~~75-10-403~~ 75-11-503, MCA.

(1) through (18) remain the same.

(19) "Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before ~~the effective date of this rule~~ November 3, 1989. Installation is considered to have commenced if:

(a) ~~The~~ the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin

physical construction of the site or installation of the tank system; and if,

(b)(i) Either either a continuous on-site physical construction or installation program has begun, or

(ii) ~~The~~ the owner or operator has entered into contractual obligations, ~~which cannot be canceled or modified without substantial loss~~, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(20) through (29) remain the same.

(30) "Installation" or "to install" means the placement of an underground storage tank, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank that store or convey regulated substances. Installation also includes repair or modification of an underground storage tank through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems.

~~(a) The terms do not include:~~

~~(i) the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank;~~

~~(ii) the installation of a leak detection device that is external to and not attached to the underground storage tank; or~~

~~(iii) the installation and maintenance of a cathodic protection system.~~

(31) through (40) remain the same.

(41) "Operator" means:

~~(a) In the case of a UST system, any person in control of, or having responsibility for, the daily operation of the UST system; and.~~

~~(b) In the case of a PST, for which reimbursement is being sought from the Montana petroleum tank release cleanup fund, an operator as defined in ARM 17.56.1101.~~

(42) remains the same.

(43) "Owner" means:

(a) In in the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

(b) In in the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use; and.

~~(c) In the case of a PST for which reimbursement is being sought from the Montana petroleum tank release cleanup fund, an owner as defined in ARM 17.56.1101.~~

(44) "Person" means:

~~(a) In the case of an UST system, an individual, trust, firm, joint stock company, federal agency corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government; and.~~

~~(b) In the case of a PST for which reimbursement is being~~

~~sought from the Montana petroleum tank release cleanup fund, a person as defined in ARM 17.56.1101.~~

(45) "Petroleum storage tank" or "PST" means a tank that contains petroleum or petroleum products and that is:

(a) an underground storage tank as defined in ~~75-10-403~~ 75-11-503, MCA;

(b) and (c) remain the same.

(d) aboveground pipes associated with tanks under (45)(b) and (c), except that pipelines regulated under the following laws are excluded:

(i) ~~The Natural Gas Pipeline Safety Act of 1968 the Pipeline Safety Laws (49 USC 1671 60101, et seq.); and~~

(ii) ~~The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC 2001, et seq.); and~~

~~(iii)~~ state law comparable to the provisions of law referred to in ~~(44)~~ (45)(d)(i) and ~~(ii)~~, if the facility is intrastate.

(46) through (64) remain the same.

~~(65) "Uniform fire code" or "UFC" means the edition of the Uniform Fire Code adopted by the state fire marshal in ARM 23.7.111.~~

(66) through (68) remain the same, but are renumbered (65) through (67).

AUTH: ~~75-10-405~~ 75-11-505, 75-11-319, MCA

IMP: ~~75-10-405~~ 75-11-505, 75-11-302, 75-11-319, MCA

REASON: The proposed amendments to ARM 17.56.101 are necessary to update and correct internal state and federal statutory references. The proposed amendments to 17.56.101(30) are necessary to remove conflicts with 75-11-203(6)(a), MCA, and a redundancy with 75-11-203(6)(b), MCA. The proposed amendments to 17.56.101(41), 17.56.101(43), and 17.56.101(44) are necessary to remove references to subchapter 11, which is being repealed as part of this rulemaking. The proposed amendment of 17.56.101(65) is necessary to remove the definition of the "Uniform Fire Code" or "UFC." This definition is no longer necessary as the Uniform Fire Code is incorporated by reference in other sections of these rules.

17.56.102 APPLICABILITY (1) Except as otherwise provided in (2)- ~~through~~ (6) of ~~this rule~~, this chapter applies to all owners and operators of UST systems, and to all owners and operators of petroleum storage tanks who seek or intend to seek reimbursement from the Montana petroleum tank release cleanup fund. An UST system listed in (4) or (5) ~~of this rule~~ must comply with ARM 17.56.104.

(2) ~~Exemptions.~~ This chapter does not apply to the following UST systems:

(a) and (b) remain the same.

(3) ~~Exemptions.~~ Subchapters 2, 3, 4, 7, 8, 9, and 10, 13, and 14 do not apply to any of the following types of PSTs and UST systems:

(a) through (e) remain the same.

(f) Aboveground pipes associated with tanks under (3)(d) and (e), except that pipelines regulated under the following laws are excluded:

(i) ~~The Natural Gas Pipeline Safety Act of 1968 the Pipeline Safety Laws (49 USC 1671 60101, et seq.); and~~

(ii) ~~The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC 2001, et seq.); and~~

(iii) State state law comparable to the provisions of law referred to in (1)(f)(i) and (ii) above, if the facility is intrastate.

(4) ~~Exemptions.~~ Subchapters 2, 3, 4, 5, 7, 8, 9, 10, and 11, 13, and 14 do not apply to any of the following types of UST systems:

(a) through (c) remain the same.

(5) ~~Exemptions.~~ Subchapters 2, 3, 4, and 8 do not apply to any of the following types of UST systems:

(a) through (c) remain the same.

(6) ~~Exemptions.~~ Subchapter 8 does not apply to any of the following types of UST systems:

(a) through (c) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, 75-11-319, MCA

IMP: ~~75-10-405~~ 75-11-505, 75-11-319, MCA

REASON: Currently ARM 17.56.102 exempts specified types of storage tanks from certain subchapters of the ARM. When the department added subchapters 13 and 14 to the program rules, the department failed to amend the exemptions in ARM 17.56.102 to include the new subchapters. The proposed amendments to ARM 17.56.102 are necessary to extend the exemptions for tanks listed at ARM 17.56.102(3) and (4) to include subchapters 13 and 14. The proposed amendments are also necessary to update the reference to the federal Pipeline Safety Laws at ARM 17.56.102(3)(f)(i). The term "exceptions" is deleted because it is an internal catchphrase, which is contrary to Secretary of State formatting requirements.

17.56.201 PERFORMANCE STANDARDS FOR NEW UST SYSTEMS

(1) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements:

(1) (a) ~~Tanks.~~ Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with any one of the codes of practice developed by a nationally recognized association or independent testing laboratory adopted by reference in (a)-(c) below (1)(a)(i) through (iii):

(a) (i) ~~The~~ the tank is constructed of fiberglass-reinforced plastic in accordance with any one of the standards adopted by reference in (7) (1)(f) of this rule; or

(b) (ii) ~~The~~ the tank is constructed of steel and cathodically protected in the following manner and in accordance

with any one of the standards adopted by reference in ~~(8)~~ of this rule ~~(1)(g)~~:

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

~~(e) (iii) The the tank is constructed of a steel-fiberglass-reinforced-plastic composite in accordance with the standards adopted by reference in ~~(11)(a) and (b)~~ of this rule (1)(j)(i) and (ii).~~

~~(2) (b) Piping. The piping that may contain regulated substances, including vent lines and fill lines, and is in contact with the ground, must be properly designed, constructed, and protected from corrosion in accordance with any one of the codes of practice developed by a nationally recognized association or independent testing laboratory adopted by reference in ~~(a) and (b)~~ below (1)(b)(i) and (ii):~~

~~(a) (i) The the piping is constructed of fiberglass-reinforced plastic in accordance with all of the standards adopted by reference in ~~(10)~~ of this rule (1)(i); or~~

~~(b) (ii) The the piping is constructed of steel and cathodically protected in the following manner and in accordance with all of the standards adopted by reference in ~~(11)~~ of this rule (1)(j):~~

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

~~(3) (c) Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:~~

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

~~(b) (ii) Overfill overfill prevention equipment that will:~~

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

~~(4) (d) Installation. All tanks and piping must be properly installed in accordance with this chapter, the manufacturer's instructions or specifications, all permit conditions, and in accordance with any one of the all applicable standards adopted by reference in ~~(12)~~ of this rule (1)(k).~~

~~(5) Certification of Installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with (4) of this rule by providing a certification of compliance on the UST notification form in accordance with ARM 17.56.1001.~~

~~(a) The installer has been certified by the tank and piping manufacturers;~~

~~(b) The installer has been licensed by the department;~~

~~(c) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation;~~

~~(d) The installation has been inspected and approved by the department or the implementing agency; or~~

~~(e) All work listed in the manufacturer's installation checklists has been completed.~~

~~(6) Subsections (5)(a), (c), and (e) may be used to~~

~~demonstrate compliance with (4) and (5) until April 1, 1990. On and after that date only (5)(b) and (d) may be used to demonstrate compliance with (6) and (7) of this rule.~~

(e) Upon completion of all work and testing performed pursuant to a permit issued under subchapter 13 for the installation or modification of an underground storage tank system, the licensed installer or department inspector must certify, on a form approved by the department, compliance with the following requirements:

(i) installation or modification in accordance with (1)(d);

(ii) corrosion protection of steel tanks and piping under (1)(a) and (b);

(iii) release detection under ARM 17.56.402 and 17.56.403; and

(iv) spill and overflow protection under ARM 17.56.301.

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

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

(8) remains the same, but is renumbered (g).

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

~~(d) (iv) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," a copy of which may be obtained from NACE, International, PO Box 201009, Houston, TX 77216-1009, (281) 228-6200 and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids" which sets forth design standards for cathodically protected steel underground storage tanks, and a copy of which may be obtained from Underwriters Laboratory, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709 National Association of Corrosion Engineers, PO Box 218340, Houston, TX 77218, (713)492-0535.~~

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

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

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

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

~~(11) (j) The department hereby adopts and incorporates by reference:~~

~~(a) (i) "Uniform Fire Code", article 79, "Flammable and Combustible Liquids" (1997 edition) which sets forth the fire protection requirements where flammable and combustible liquids are stored or dispensed, and a copy of which may be obtained from Western Fire Chief's Association, 5360 South Workman Road, Whittier, CA 90601 Uniform Fire Code Association, 1260 Lake Boulevard, Suite 250, Davis, CA 95616, (888) 785-3473;~~

~~(b) (ii) American Petroleum Institute Publication 1615, Recommended Practice 1615 "Installation of Underground Petroleum Storage Systems" (5th edition, revised March 1996) which sets~~

forth requirements for sound installation of UST systems, and a copy of which may be obtained from ~~API Publications Department, 1220 L Street NW, Washington, DC 20005, (202)682-8375~~ Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956;

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

~~(d) (iv) National Association of Corrosion Engineers Standard RP-01-69, RP0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems" which sets forth practices for the control of external corrosion or buried or submerged metallic piping systems, and a copy of which may be obtained from National Association of Corrosion Engineers, PO Box 218340, Houston, TX 77218, (713)492-0535~~ NACE, International, PO Box 201009, Houston, TX 77216-1009, (281) 228-6200.

~~(12) (k)~~ The department hereby adopts and incorporates by reference:

~~(a) (i) American Petroleum Institute Publication 1615, Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems" (5th edition, revised March 1996) which sets forth proper installation procedures for UST systems, and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202)682-8375~~ Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956;

~~(b) (ii) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems" (revised 2000) which sets forth proper installation procedures for UST systems, and a copy of which may be obtained from Petroleum Equipment Institute, PO Box 2380, Tulsa, OK 74101 (918)743-9941 (918) 494-9696; and~~

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

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The proposed amendments to ARM 17.56.201 are necessary to define the requirements of proper tank installation, enumerate the requirements the installer or inspector must verify in the Certification of Compliance, require licensed installers or department inspectors to certify compliance with department rules for tank installations, and update performance standards for underground storage tank installations incorporated by reference in the rule. The proposed amendments to ARM 17.56.201(1)(d) are necessary to more specifically list the requirements for proper tank installation. The existing rule does not clearly require the installer to demonstrate compliance with permit conditions, manufacturer's recommendations, and applicable standards incorporated by reference in the rule. The proposed amendment will make these requirements clear.

The proposed amendments to ARM 17.56.201(1)(e) will specifically require the licensed installer or department inspector, rather than the owner or operator, to certify

compliance with the certification requirements in ARM 17.56.201(1)(d), as amended herein, corrosion protection requirements for tanks and piping, requirements for release detection, and spill and overflow protection requirements. These changes are necessary to clarify the responsibility of the licensed installer or department inspector to certify compliance with tank installation and design standards and with permit conditions. Under the current rule, the owner or operator must provide the certification of compliance. The licensed installer or department inspector has first hand knowledge of the facts related to the tank installation and is better qualified to certify that installation requirements were met than is the owner or operator. The proposed amendments are necessary to require demonstration of compliance with critical system performance parameters by requiring a certificate of compliance from the licensed installer or department inspector and will better protect human health and the environment. The proposed amendments also provide for a department-approved form to meet certification requirements.

The proposed amendments to ARM 17.56.201(1)(g), (j) and (k) are necessary to update treatises incorporated by reference in those sections of the rule to the latest editions.

17.56.202 UPGRADING OF EXISTING UST SYSTEMS

(1) ~~Alternatives allowed.~~ No later than December 22, 1998, all existing UST systems must comply with one of the following requirements:

(a) remains the same.

(b) ~~The the~~ upgrading requirements in (2)- through (4) ~~of this rule;~~ or

(c) ~~Closure~~ closure requirements under subchapter 7 ~~of this chapter,~~ including applicable requirements for corrective action under subchapter 6.

(2) ~~Tank upgrading requirements.~~ Steel tanks must be upgraded to meet any one of the following requirements in accordance with all of the standards adopted by reference in (5) ~~of this rule;~~

(a) ~~Interior lining.~~ A a tank may be upgraded by internal lining if:

(i) and (ii) remain the same.

(b) ~~Cathodic protection.~~ A a tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of ARM 17.56.201(1)(b)(ii), ~~(iii), and (iv)~~ (a)(ii)(B), (C) and (D) and the integrity of the tank is ensured using one of the following methods:

(i) remains the same.

(ii) ~~The the~~ tank has been installed for less than 10 years and is monitored monthly for releases in accordance with ARM 17.56.407(4)-~~(8)~~ (1)(d) through (g); or

(iii) ~~The the~~ tank has been installed for less than 10 years and is assessed for corrosion holes by conducting ~~2~~ two tightness tests that meet the requirements of ARM 17.56.407(3)-~~(1)~~ (c). The first tightness test must be conducted prior to installing the cathodic protection system. The second

tightness test must be conducted between 3 three and 6 six months following the first operation of the cathodic protection system.

(c) ~~Internal lining combined with cathodic protection.~~ A tank may be upgraded by both internal lining and cathodic protection if:

(i) ~~The~~ the lining is installed in accordance with the requirements of ARM 17.56.304; and

(ii) ~~The~~ the cathodic protection system meets the requirements of ARM 17.56.201(1)(b)(ii), ~~(iii), and (iv)(a)(ii)(B), (C) and (D).~~

(3) ~~Piping upgrading requirements.~~ Metal piping that may contain regulated substances, including vent lines and fill lines, and is in contact with the ground, must be cathodically protected in accordance with all of the standards adopted by reference in ARM 17.56.201(1)(j) and must meet the requirements of ARM 17.56.201(2)(b)(ii), ~~(iii), and (iv)(1)(b)(ii)(B), (C) and (D).~~

(4) ~~Spill and overflow prevention equipment.~~ To prevent spilling and overflowing associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overflow prevention equipment requirements specified in ARM 17.56.201(3)(1)(c).

(5) through (5)(b) remain the same.

(c) National Association of Corrosion Engineers Standard ~~RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems" RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection"~~ which sets forth cathodic protection standards for buried or submerged metallic liquid storage systems, and a copy of which may be obtained from National Association of Corrosion Engineers, PO Box 218340, Houston, TX 77218, (713) 492-0535 NACE, International, PO Box 201009, Houston, TX 77216-1009, (281) 228-6200; and

(d) remains the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The proposed amendments to ARM 17.56.202 are necessary to update references to treatises developed by technical associations and herein adopted and incorporated by reference by the department for the planning, design, construction, and maintenance of underground storage tanks. The proposed amendments are also necessary to reformat the rule to meet the standards imposed by the Secretary of State.

17.56.221 ISSUANCE OF COMPLIANCE TAGS AND CERTIFICATES

(1) through (3)(b) remain the same.

(4) The department may issue a permit allowing new UST systems to be filled once in order to complete installation in accordance with ARM 17.56.201(4)(1)(d). The department may issue this permit concurrently with an installation permit issued pursuant to subchapter 13.

(5) and (6) remain the same.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

REASON: The proposed amendment is necessary to correct the internal reference to ARM 17.56.201 to reflect the numbering changes resulting from reformatting ARM 17.56.201 to meet the standards imposed by the Secretary of State.

17.56.301 SPILL AND OVERFILL CONTROL (1) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. The transfer procedures described in Article 79, Division XII of the Uniform Fire Code adopted by reference in (3) below shall be used to comply with this ~~subsection~~ section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(2) remains the same.

(3) The department hereby adopts and incorporates by reference ~~the~~ the Uniform Fire Code, Article 79, "Flammable and Combustible Liquids" (1997 edition) which sets forth the fire protection requirements where flammable and combustible materials are stored or dispensed, a copy of which may be obtained from Uniform Fire Code Association, 1260 Lake Boulevard, Suite 250, Davis, CA 95616, (888) 785-3473. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" (2000 edition) which sets forth transferring and dispensing practices for flammable and combustible liquids, and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005 Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956, (202)682-8375 or National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: This proposed amendment is necessary to update references to treatises developed by technical associations and adopted by the department for the planning, design, construction, and maintenance of underground storage tanks. The amendments are also necessary to reformat the rule to meet the Secretary of State's formatting requirements.

17.56.302 OPERATION AND MAINTENANCE OF CORROSION PROTECTION (1) All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

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

~~(2) (b)~~ All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

~~(a) (i) Frequency.~~—All all cathodic protection systems must be tested within 6 six months of installation and at least every 3 three years thereafter; and

~~(b) (ii) Inspection criteria.~~—The the criteria that are used to determine that cathodic protection is adequate as required by this section rule must be in accordance with National Association of Corrosion Engineers Standard RP-02-85, "~~Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems,~~" RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", adopted by reference in ~~(5) of this rule~~ (1)(e).

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

~~(4) (d)~~ For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained in accordance with ARM 17.56.305 to demonstrate compliance with the performance standards in this rule. These records must provide the following:

~~(a) (i)~~ The the results of the last 3 three inspections required in ~~(3) of this rule~~ (1)(c); and

~~(b) (ii)~~ The the results of testing from the last 2 two inspections required in ~~(2) of this rule~~ (1)(b).

~~(5) (e)~~ The department hereby adopts and incorporates by reference: National Association of Corrosion Engineers Standard RP-02-85, "~~Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems~~" RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection" which sets forth cathodic protection system standards for prevention of corrosion on buried or submerged metallic UST systems, and a copy of which may be obtained from ~~National Association of Corrosion Engineers, P.O. Box 218340, Houston, TX 77218, (713) 492-0535~~ NACE, International, PO Box 201009, Houston, TX 77216-1009, (281) 228-6200.

AUTH: 75-10-405 75-11-505, MCA

IMP: 75-10-405 75-11-505, MCA

REASON: These proposed amendments are necessary to update references to treatises developed by technical associations and adopted by the department for the planning, design, construction, and maintenance of underground storage tanks. The sections are being renumbered to meet Secretary of State

formatting standards.

17.56.304 REPAIRS (1) and (2) remain the same.

(3) Repairs must meet the following requirements:

(a) through (e) remain the same.

(f) Upon completion of the repair and before the UST system is placed in service, the following tests must be performed:

(i) repaired tanks and piping must be tightness tested in accordance with ARM 17.56.407~~(3)~~(1)(c) and 17.56.408~~(2)~~(1)(b); and

(ii) corrosion protection systems circuitry must be tested to ensure it is still functioning.

(g) Within ~~6~~ six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with ARM 17.56.302~~(2)~~ and ~~(3)~~(1)(b) and (c) to ensure that it is operating properly.

(h) through (4)(e) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The proposed amendments are necessary to correct internal references to ARM 17.56.407, 17.56.408 and 17.56.302 and to reformat the rule to meet the Secretary of State's formatting standards.

17.56.305 REPORTING AND RECORDKEEPING (1) Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the department or the implementing agency, or both as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of RCRA, as amended or pursuant to other state laws or rules or both.

~~(1) (a) Reporting.~~ Owners and operators must submit the following information to the department:

~~(a) (i) Notification~~ notification for all UST systems which includes certification of installation for new UST systems;

~~(b) (ii) Reports~~ reports of all releases including suspected releases, spills and overfills, and confirmed releases;

~~(c) (iii) Corrective~~ corrective actions planned or taken including initial abatement measures, initial site history, free product removal, the result of remedial investigations, and cleanup plan; and

~~(d) (iv) A~~ a notification before permanent closure or change-in-service.

~~(2) (b) Recordkeeping.~~ Owners and operators must maintain the following information:

~~(a) (i) Documentation~~ documentation of operation of corrosion protection equipment;

~~(b) (ii) Documentation~~ documentation of UST system repairs;

(e) (iii) ~~Recent~~ recent compliance with release detection requirements; and

(d) (iv) ~~Results~~ results of the site investigation conducted at permanent closure.

(3) (c) ~~Availability and maintenance of records.~~ Owners and operators must keep the records required either:

(a) (i) ~~At~~ at the UST site and immediately available for inspection by the department or the implementing agency;

(b) (ii) ~~At~~ at a readily available alternative site and be provided for inspection by the department or the implementing agency upon request; or

(e) (iii) ~~In~~ in the case of permanent closure records required under ARM 17.56.705, owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: This proposed amendment is necessary to delete the internal catchphrases and renumber the sections to meet Secretary of State formatting standards.

17.56.308 OPERATING PERMIT REQUIRED (1) through (7) remain the same.

(8) For an underground storage tank system installed after December 31, 2001, the department shall issue a conditional operating permit and tag upon ~~the submission receipt~~ of all ~~required documentation related to the installation of that underground storage tank system~~ the certification of compliance as required by ARM ~~17.56.1305~~ 17.56.201(1)(e). A conditional operating permit and tag expire ~~90~~ 180 days after issuance.

(9) through (12) remain the same.

AUTH: 75-11-505, MCA

IMP: 75-11-509, MCA

REASON: The proposed amendments to ARM 17.56.308 are necessary to simplify the Department's procedures for issuing a conditional operating permit and tag for newly installed underground storage tank systems. ARM 17.56.308, as amended, will allow the Department to issue a conditional operating permit and tag upon receipt of the certification of compliance, which is submitted by the licensed installer or Department inspector upon completion of all work and testing performed in accordance with an installation permit. The proposed amendments are also necessary to extend the expiration date for the conditional operating permit from 90 to 180 days. This extended time period will result in more meaningful operation and maintenance records for new tanks and allow compliance inspectors and the Department to better assess new facilities prior to issuing an operating permit and tags.

17.56.309 REQUIREMENTS FOR COMPLIANCE INSPECTIONS AND COMPLIANCE PLANS (1) through (3) remain the same.

(4) For an underground storage tank system that is installed on or after November 1, 2001, an initial inspection must be completed at least ~~30~~ 90 days, but no more than ~~60~~ 120 days, after the date the conditional operating permit is issued. If the facility has other underground storage tank systems installed prior to November 1, 2001, all subsequent inspections of an underground storage tank system installed on or after November 1, 2001 must be conducted on the same schedule as the underground storage tank systems in existence prior to that date.

(5) through (9) remain the same.

AUTH: 75-11-505, MCA
IMP: 75-11-509, MCA

REASON: The proposed amendments to ARM 17.56.309 are necessary to extend the time before which an initial compliance inspection must be completed for a newly installed underground storage tank system. The existing rule requires an initial inspection to be completed at least 30, but no more than 60, days after the date the conditional operating permit is issued. The proposed amendment will require an initial inspection to be completed at least 90, but no more than 120, days after the date the conditional operating permit is issued. This extended time period will result in more meaningful information related to the operation and maintenance of new tanks, which may be assessed during the compliance inspection.

17.56.401 GENERAL REQUIREMENTS FOR ALL UST SYSTEMS

(1) Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

(a) and (b) remain the same.

(c) ~~Meets~~ meets the performance requirements in ARM 17.56.407 or 17.56.408, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990 except for methods permanently installed prior to that date, must be capable of detecting a leak rate or quantity specified for that method in ARM 17.56.407~~(2)-(4)~~(1)(b) through (d) or 17.56.408~~(1) and (2)(1)(a) and (b)~~ with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(2) remains the same.

(3) Owners and operators of all UST systems must comply with the release detection requirements of this subchapter by December 22 of the year listed in the following table below:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year system was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown	RD	P			
1965-69		P/RD			
1970-74		P	RD		
1975-79		P		RD	
1980-88		P			RD

New tanks (after Dec. 22, 1988) immediately upon installation.
P = Must begin release detection for all pressurized piping in accordance with ARM 17.56.402(2)(a)(1)(b)(i) and 17.56.403(2)(d).

RD = Must begin release detection for tanks and suction piping in accordance with ARM 17.56.402(1)(a) and (b)(ii), ~~17.56.402(2)(b)~~, and 17.56.403.

(4) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for non-commercial purposes, heating oil tanks, and emergency power generator tanks which were installed before 1965 or for which the date of installation is unknown, must comply with release detection requirements by December 22, 1990. Any of these types of tanks installed on or after January 1, 1965 must follow the schedule set forth in (3) ~~of this rule~~.

(5) Any existing UST system that cannot apply a method of release detection that complies with the requirements of this subchapter must complete the closure procedures in subchapter 7 by the date on which release detection is required for that UST system under (4) ~~of this rule~~.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The proposed amendments are necessary to correct internal references to ARM 17.56.402, 17.56.403, 17.56.407 and 17.56.408 that have been reformatted to comply with the formatting standards of the Secretary of State.

17.56.402 REQUIREMENTS FOR PETROLEUM UST SYSTEMS

(1) Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

(a) ~~Tanks~~ tanks must be monitored at least every 30 days for releases using one of the methods listed in ARM 17.56.407(4)~~(8)~~(1)(d) through (h) except that:

(i) UST systems that meet the performance standards in ARM 17.56.201 or 17.56.202, and the monthly inventory control requirements in ARM 17.56.407(1)(a) or ~~(2)(b)~~, may use tank tightness testing (conducted in accordance with ARM 17.56.407(3)~~(1)~~(c)) at least every 5 five years until December 22, 1998, or until 10 years after the tank is installed or

upgraded under ARM 17.56.202(2), whichever is later;

(ii) UST systems that do not meet the performance standards in ARM 17.56.201 or 17.56.202 may use monthly inventory controls (conducted in accordance with ARM 17.56.407(1)(a) or ~~(2)(b)~~) and annual tank tightness testing (conducted in accordance with ARM 17.56.407~~(3)(1)(c)~~) until December 22, 1998 when the tank must be upgraded under ARM 17.56.202 or permanently closed under ARM 17.56.702;

(iii) ~~Tanks~~ tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with ARM 17.56.407~~(2)(1)(b)~~); and

(iv) ~~Farm~~ farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for non-commercial purposes, a tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored, and emergency power generator tanks with capacities of 1,100 gallons or less capacity may use yearly tank gauging (conducted in accordance with ARM 17.56.407~~(2)(1)(b)~~).

(b) Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(i) ~~Underground~~ underground piping that conveys regulated substances under pressure must:

(A) Be be equipped with an automatic line leak detector conducted in accordance with ARM 17.56.408(1)(a); and

(B) ~~Have~~ have an annual line tightness test conducted in accordance with ARM 17.56.408~~(2)(1)(b)~~ or have monthly monitoring conducted in accordance with ARM 17.56.408~~(3)(1)(c)~~.

(ii) ~~Underground~~ underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every ~~3~~ three years and in accordance with ARM 17.56.408~~(2)(1)(b)~~, or use a monthly monitoring method conducted in accordance with ARM 17.56.408~~(3)(1)(c)~~. No release detection is required for suction piping that is designed and constructed to meet the following standards:

(A) through (D) remain the same.

(E) A a method is provided that allows compliance with ~~(B)-(D)~~ above (1)(b)(ii)(B) through (D) to be readily determined.

(iii) ~~Underground~~ underground piping connected to heating oil tanks with a capacity of 660 gallons or less is exempt from the requirements of (1)(b)(i) and (ii) ~~of this rule~~ provided that:

(A) through (iv) remain the same.

AUTH: ~~75-10-405~~ 75-11-505, 75-11-302, MCA

IMP: ~~75-10-405~~ 75-11-505, 75-11-302, MCA

REASON: The proposed amendments are necessary to correct internal references to ARM 17.56.407 and 17.56.408 and reformat the rule to meet the formatting standards of the Secretary of State.

17.56.407 METHODS OF RELEASE DETECTION FOR TANKS

(1) Each method of release detection for tanks used to meet the requirements of ARM 17.56.402 must be conducted in accordance with the following:

~~(1) (a) Inventory control.~~ Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0% of flow-through plus 130 gallons on a monthly basis in the following manner:

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

~~(2) (b) Manual tank gauging.~~ Manual tank gauging must meet the following requirements:

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

~~(e) (v) Tanks tanks~~ of 550 gallons or less nominal capacity may use this method as the sole method of release detection. Tanks of 551 to 2,000 gallons may use the method in place of manual inventory control in (1)(a) ~~of this rule~~. Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this subchapter.

~~(f) (vi) Tanks tanks~~ listed in ARM 17.56.402(1)(d)(a)(iv) may use this method of release detection as the sole method of annual tank tightness testing.

~~(3) (c) Tank tightness testing.~~ Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

~~(4) (d) Automatic tank gauging.~~ Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

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

~~(b) (ii) Inventory inventory~~ control (or another test of equivalent performance) is conducted in accordance with the requirements of (1)(a) ~~of this rule~~.

~~(5) (e) Vapor monitoring.~~ Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(a) through (e) remain the same, but are renumbered (i) through (v).

~~(f) (vi) In in~~ the UST excavation zone, the site is assessed to ensure compliance with the requirements in ~~(a)-(d) above~~ (1)(e)(i) through (iv) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and

(g) remains the same, but is renumbered (vii).

~~(6) (f) Groundwater monitoring.~~ Testing or monitoring for liquids on the groundwater must meet the following requirements:

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

~~(g) (vii) Within within~~ and immediately below the UST system excavation zone, the site is assessed to ensure

compliance with the requirements in ~~(a)-(e)~~ above (1)(f)(i) through (v) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product;

(h) and (i) remain the same, but are renumbered (viii) and (ix).

~~(7) (g) Interstitial monitoring.~~ Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

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

(i) through (vi) remain the same, but are renumbered (A) through (F).

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

~~(8) (h) Other methods.~~ Any other type of release detection method, or combination of methods, can be used if it can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The proposed amendments to ARM 17.56.407 are necessary to correct an erroneous administrative rule reference at ARM 17.56.407(1)(b)(vi) and to renumber the sections to meet Secretary of State formatting standards.

17.56.408 METHODS OF RELEASE DETECTION FOR PIPING

(1) Each method of release detection for piping used to meet the requirements of ARM 17.56.402 must be conducted in accordance with the following:

~~(1) (a) Automatic line leak detectors.~~ Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 three gallons per hour at 10 pounds per square inch line pressure within ± one hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.

~~(2) (b) Line tightness testing.~~ A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at 1 1/2 times the operating pressure.

~~(3) (c) Applicable tank methods.~~ Any of the methods in ARM 17.56.407~~(5)-(8)~~(1)(e) through (h) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The proposed amendments are necessary to correct an internal reference to ARM 17.56.407 and to reformat the rule to meet the formatting standards of the Secretary of State.

17.56.409 RELEASE DETECTION RECORDKEEPING (1) All UST system owners and operators must maintain records in accordance with ARM 17.56.305 demonstrating compliance with all applicable requirements of this subchapter. These records must include the following:

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

~~(2)~~ (b) The results of any sampling, testing, or monitoring must be maintained for at least ± one year, except that the results of tank tightness testing conducted in accordance with ARM 17.56.407~~(3)~~(1)(c) must be retained until the next test is conducted; and

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

AUTH: ~~75-10-405~~ 75-11-505, MCA

IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The proposed amendments are necessary to correct an internal reference to ARM 17.56.407 and to reformat the rule to meet the formatting standards of the Secretary of State.

17.56.502 REPORTING OF SUSPECTED RELEASES (1) Owners and operators, any installer, any person who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407~~(3)~~(1)(c) or 17.56.408~~(2)~~(1)(b), must report to the department and the implementing agency by telephone within 24 hours of the existence of any of the following conditions, and follow the procedures in ARM 17.56.504 for any of these conditions:

(1) through (3) remain the same, but are renumbered (a) through (c).

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

AUTH: ~~75-10-405~~ 75-11-505, 75-11-319, MCA

IMP: ~~75-10-405~~ 75-11-505, 75-11-309, MCA

REASON: The proposed amendments are necessary to correct internal references to ARM 17.56.407 and 17.56.408 and to renumber the sections to meet Secretary of State formatting standards.

17.56.504 RELEASE INVESTIGATION AND CONFIRMATION STEPS

(1) Unless corrective action is initiated in accordance with subchapter 6, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under ARM 17.56.502, within 7 seven days of the discovery of the condition identified in ARM 17.56.502, using either of the following steps, unless both are required by the language of this rule:

~~(1) (a) System test.~~ Owners and operators must conduct tests (according to the requirements for tightness testing in ARM 17.56.407~~(3)~~~~(1)(c)~~ and 17.56.408~~(2)~~~~(1)(b)~~) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.

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

~~(c) (iii) Owners~~ owners and operators must conduct a site check as described in ~~(2) of this rule~~ (1)(b) if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

~~(2) (b) Site checking.~~ Owners and operators must measure for the presence of a release where contamination is most likely to be present at the PST or UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. The department should be consulted to assist in determining sample types, sample locations, and measurement methods. Owners and operators of PST sites and owners and operators of UST sites should refer to the Montana Quality Assurance Plan for Investigation of Underground Storage Tank Releases as a guide in the collection, preservation and analysis of field samples;

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

~~(b) (ii) If~~ if the test results for the excavation zone or the PST or UST site are taken according to ARM 17.56.504(2)(1)(b) and do not indicate that a release has occurred, further investigation is not required if approved by the department; and

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

AUTH: ~~75-10-405~~ 75-11-505, 75-11-319, MCA

IMP: ~~75-10-405~~ 75-11-505, 75-11-309, MCA

REASON: The proposed amendments are necessary to correct internal references to ARM 17.56.407 and 17.56.408 and to renumber the sections to meet Secretary of State formatting standards.

17.56.602 INITIAL RESPONSE AND ABATEMENT MEASURES

(1) Upon confirmation of a release in accordance with ARM 17.56.504 or after a release from the PST or UST system is identified in any other manner, owners and operators must:

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

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

~~(2) (b)~~ Perform the following initial abatement measures:

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

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

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

~~(e)~~ (v) Determine determine the extent and magnitude of contamination in soils, groundwater, surface water or both, which contamination has resulted from the release at the PST or UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release. Samples must be collected and analyzed in accordance with ARM 17.56.504~~(2)~~(1)(b); and

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

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

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

~~(4)~~ (d) Within 30 days after release confirmation, ~~owners and operators must~~ submit a report to the department on a form designated by the department summarizing the initial response and abatement measures taken under ~~(1)-(3) of this rule~~ (1)(a) through (c) and any resulting information or data. The report must include data on the nature, estimated quantity and source of the release. If initial response and abatement measures extend beyond the 30-day time period, owners and operators must also submit an additional follow-up completion report according to a schedule established by the department. If free product is removed, the following information must also be provided in or with the report:

(a) through (g) remain the same, but are renumbered (i) through (vii).

AUTH: ~~75-10-405~~ 75-11-505, 75-11-319, MCA

IMP: ~~75-10-405~~ 75-11-505, 75-11-309, MCA

REASON: The proposed amendments are necessary to correct an internal reference to ARM 17.56.504 and to renumber the sections to meet Secretary of State formatting standards.

17.56.604 REMEDIAL INVESTIGATION (1) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of free and dissolved product contamination in the surface water and in groundwater, owners and operators must conduct a remedial investigation of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(a) remains the same.

(b) Free free product is found to need recovery in compliance with ARM 17.56.602~~(3)~~(1)(c);

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

(4) If a remedial investigation has been conducted, owners and operators must submit a report containing the information collected under (3) ~~of this rule~~ within 120 days of release confirmation. If investigation extends beyond the time for

submission of the report, owners and operators must also submit an additional follow-up completion report according to a schedule established by the department.

AUTH: ~~75-10-405~~ 75-11-505, 75-11-319, MCA
IMP: ~~75-10-405~~ 75-11-505, 75-11-309, MCA

REASON: The proposed amendments are necessary to correct an internal reference to ARM 17.56.602.

17.56.902 NOTIFICATION REQUIREMENTS (1) remains the same.

(2) Owners required to submit a notice under (1) ~~of this rule~~ must provide a notice to the department for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operations must file a separate notification form for each separate place of operation.

(3) Notice required to be submitted under (1) ~~of this rule~~ must provide all of the information in sections I through VI of the prescribed form for each tank for which notice must be given. Notices for tanks installed after December 22, 1988 must also provide all of the information in section VII of the prescribed form for each tank for which notice must be given.

(4) Owners and operators of new or modified UST systems must certify in the notification form: ~~that they have complied with the following requirements:~~

~~(a) Installation of tanks and piping under ARM 17.56.201(5);~~

~~(b) Cathodic protection of steel tanks and piping under ARM 17.56.201(1) and (2);~~

~~(c) (a) that they have complied with the Financial financial responsibility requirements under subchapter 8; and~~

~~(d) Release detection under ARM 17.56.402 and 17.56.403.~~

(b) must provide the following information:

(i) the location of each tank system;

(ii) ownership of each tank system;

(iii) status of each tank system;

(iv) the date of each tank system installation;

(v) the estimated total capacity of each tank system;

(vi) tank and piping material;

(vii) the substance currently or last stored in each tank system; and

(viii) any other information required in the notification form necessary to ensure tanks can be adequately identified for regulatory purposes.

(5) Owners and operators of new or modified UST systems must ensure that, upon completion of all work and testing performed pursuant to the installation permit, the licensed installer or department inspector completes a certification of compliance in accordance with the requirements in ARM 17.56.201(1)(e) certifies in the notification form that the methods used to install the tanks and piping comply with the requirements in ARM 17.56.201(4).

(6) Beginning October 24, 1988, any person who sells a

tank intended to be used as an underground storage tank must notify the purchaser of the tank of the owner's notification obligations under (1) ~~of this rule~~. The form prescribed by the department shall be used to comply with this requirement.

(7) remains the same.

AUTH: ~~75-10-405~~ 75-11-505, MCA
IMP: ~~75-10-405~~ 75-11-505, MCA

REASON: The proposed amendments to ARM 17.56.902 are necessary to clarify the information submitted and certified as correct by the owner or operator on the Department notification form for new or modified underground storage tank systems and to clarify the installer's obligation to certify compliance with tank installation or modification requirements on the Certification of Compliance. The proposed amendments will make the information required by the rule consistent with the information requested in the form the Department uses for notification of tank installation and modification. The proposed amendments are also necessary to implement the proposed amendments to ARM 17.56.201(1)(e). Under the proposed amendments to ARM 17.56.902, the owners and operators must ensure that the licensed installer or Department inspector completes a Certification of Compliance, pursuant to ARM 17.56.201(1)(e) as amended herein, upon completion of all work and testing performed in accordance with the installation permit.

17.56.1301 DEFINITIONS For the purposes of subchapters 13 and 14 and unless otherwise provided, the following terms have the meanings given to them in this rule and must be used in conjunction with the definitions in subchapter 1 of this chapter and those in 75-11-203 and ~~17-11-503~~ 75-11-503, MCA:

(1) remains the same.

(2) "External leak detection device" means a monitoring system that is located external to and not attached to an underground storage tank system and that is designed and installed to detect a release of the regulated substance stored in the underground storage tank system. Examples of external leak detection devices include, but are not limited to, soil vapor monitoring wells, observation wells, continuous monitoring equipment, if any, that is installed within the wells to detect a release, and a groundwater monitoring well when constructed by a person holding a monitoring well constructor license issued by the board of water well contractors and in accordance with the provisions of ARM Title 36, chapter 21, and ARM 17.56.407~~(6)~~(1)(f).

(3) through (7) remain the same.

AUTH: 75-11-204, 75-11-505, MCA
IMP: 75-11-204, 75-11-209, 75-11-210, 75-11-212, 75-11-509, MCA

REASON: The proposed rule amendments are necessary to

correct the references to 75-11-503, MCA, and to correct an internal reference to ARM 17.56.407.

17.56.1304 PERMIT APPLICATION REVIEW FEES (1) A person applying for an underground storage tank installation or closure permit shall pay to the department the applicable permit application review fee provided in (2) through (5) ~~of this rule,~~ and, if a licensed installer will not conduct the installation or closure, the applicable inspection fee provided in ARM 17.56.1309.

~~(2) If a permit is denied or an application is determined by the department to be incomplete, and the application is not resubmitted within 30 days of the department's determination, the department shall refund 50% of the permit application review fee and 100% of any inspection fee paid by the applicant. If a permit application is determined by the department to be incomplete, the department shall notify the applicant of the deficiencies. An incomplete permit application expires when an applicant fails to respond to the department's notice of deficiencies within six months of receiving the notice from the department. A new permit application, accompanied by the proper permit application review fee, must be submitted before an expired permit application may be processed by the department. A permit application is incomplete until the permit application review fee is paid to the department.~~

(3) through (5) remain the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-209, 75-11-212, MCA

REASON: The proposed amendments to ARM 17.56.1304 are necessary to remove the requirement that the Department refund a portion of the permit application review fee under certain circumstances, to provide an expiration date for incomplete permit applications and to require submission of a permit application review fee with an application before the application is considered complete. The present rule requires the Department to refund a portion of the permit application review fee when a permit application is either denied or deemed incomplete and the application is not resubmitted within 30 days. The Department proposes to adopt a nonrefundable permit application review fee and provide a termination date for incomplete permit applications of six months, running from the date the applicant receives notice that the permit application is incomplete. During the six-month period information may be submitted to complete an incomplete permit application. Permit applications remaining incomplete after the six-month period will expire and a new permit application and review fee will be required in order to process the application. Under the proposed amendment a permit application will be considered incomplete until the permit application review fee is submitted. These amendments are necessary to ensure that the costs of permit review are covered by the permit review fee and to ensure that the Department receives permit application review fees

before it processes permit applications.

Most applicants promptly submit information required to complete an incomplete permit application. Therefore, the Department does not expect to invoke its authority to deem an incomplete permit application expired very often.

The department finds that maintaining a process to provide partial refunds of the permit application review fee is not cost effective because there is a fixed cost related to permit review which is not reduced by the outcome of the review. It is necessary to eliminate this partial refund of permit application review fees, in order to reduce potential revenue shortfalls.

17.56.1305 PERMIT ISSUANCE, TERMS, CONDITIONS (1) Upon receipt of a completed permit application and the fees required by ARM 17.56.1304 or 17.56.1309 for the installation or closure of an underground storage tank system, the department shall review the application and determine whether the proposed installation or closure meets the criteria for approval in (2) ~~of this rule.~~

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

(3) A permit issued to an applicant under this rule must state:

(a) through (e) remain the same.

(f) any special conditions necessary to ensure compliance with (2) ~~of this rule.~~

(4) through (6) remain the same.

(7) A permit issued by the department under this rule or under ARM 17.56.1306 is issued subject to the accuracy of the information provided by the applicant in the permit application, the information stated or referenced on the permit pursuant to (3) ~~of this rule~~, compliance with all applicable statutes and rules and any conditions applied by the department. Any installation or closure not conducted in accordance with any information, condition(s), statute or rule will be considered to be conducted without a permit, and in violation of the law.

(8) through (11) remain the same.

AUTH: 75-11-204, 75-11-505, MCA

IMP: 75-11-204, 75-11-209, 75-11-212, 75-11-505, MCA

REASON: This proposed amendment is necessary to correct a typographical error which omitted the word "conditions" at ARM 17.56.1305(3)(f) and to make minor formatting corrections.

17.56.1402 ELIGIBILITY FOR LICENSE (1) A person may not be granted an installer license by the department unless that person:

(a) through (4)(b) remain the same.

AUTH: 75-11-204, MCA

IMP: 75-11-204, 75-11-210, 75-11-211, 75-11-214, 75-11-505, 75-11-509, MCA

REASON: The proposed amendment to ARM 17.56.1402 is

necessary to correct a typographical omission of the word "not" without which the rule states the opposite of the department's intention.

The amendments to the authority and implementing citations in this notice are necessary to reflect the relocation of the Underground Storage Act in the Montana Code.

4. ARM 17.56.103 (Auth: 75-10-405, MCA; Imp: 75-10-405, MCA) which is located at pages 17-6079 and 17-6080 of the Administrative Rules of Montana is proposed for repeal because new tank performance standards are being proposed under ARM 17.56.201 and 17.56.202. ARM 17.56.1101 through 17.56.1103 (Auth: 75-11-319, MCA; Imp: 75-11-309, MCA) and 17.56.1104 (Auth: 75-11-319, MCA; Imp: 75-11-302, 75-11-309, 75-11-319, MCA) which are located at pages 17-6401 through 17-6406 of ARM, are proposed for repeal because these rules governing Petroleum Storage Tank Release Compensation have been superceded by the Petroleum Release Compensation Board's own rules in Title 17, chapter 58. This subchapter is obsolete and must be removed to avoid duplicitous and sometimes conflicting administrative rules.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Kirsten Bowers, Remediation Division, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; by fax (406) 444-1902; or by email to kbowers@state.mt.us, no later than April 24, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Keith Jones, attorney, has been designated to preside over and conduct the hearing.

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

ejohnson@state.mt.us or may be made by completing a request form at any rules hearing held by the Department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

James M. Madden

JAMES M. MADDEN

Rule Reviewer

BY: Jan P. Sensibaugh

JAN P. SENSIBAUGH, Director

Certified to the Secretary of State, March 17, 2003.

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

In the matter of the adoption of	)	NOTICE OF PUBLIC
Rule I and the amendment of ARM	)	HEARING ON PROPOSED
37.86.2221, 37.86.3506,	)	ADOPTION AND AMENDMENT
37.86.3507, 37.86.3515,)	
37.86.3705, 37.86.3706,)	
37.86.3707, 37.86.3715, 37.88.101,)	
37.88.1106 and 37.88.1110)	
pertaining to medicaid mental)	
health services and the mental)	
health services plan)	

TO: All Interested Persons

1. On April 16, 2003, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on April 7, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rule as proposed to be adopted provides as follows:

RULE I EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICE (EPSDT), COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT

(1) Comprehensive school and community treatment means a comprehensive, planned course of outpatient treatment provided primarily in the school to a child or adolescent with a serious emotional disturbance, as defined in ARM 37.89.103(14), through a program operated by a public school district that is a licensed mental health center or a school district that has a contract with a licensed mental health center. To be approved a program must provide the department with a satisfactory written description of the program prior to beginning the service. The department must approve or deny a program within 30 days of receiving a complete application. The program description, at a minimum, must document:

- (a) how the program will meet each child's needs for treatment during and outside school hours, including:
 - (i) individual, family, and group therapy;
 - (ii) crisis intervention services;
 - (iii) case management;

(iv) continuing observation, support and behavioral intervention in the classroom and on the playground; and

(v) other services effective in the treatment of the child's emotional disturbance;

(b) how the program will meet each child's needs for treatment during school vacations in a manner integrated in the individual's treatment plan;

(c) limited circumstances which would require a child in the program to access mental health services outside the program and how the program would minimize reliance on other service providers;

(d) admission and discharge criteria for the program; and

(e) how the program will accomplish and ensure:

(i) treatment, crisis and discharge planning and regular updates of such plans;

(ii) family involvement in treatment and discharge planning and in the course of treatment;

(iii) continuing contact and information exchange with persons and agencies significantly involved in the child's treatment;

(iv) coordination of all mental health services and treatments the child receives;

(v) continuing quality improvement including the regular measurement and reporting of program performance and individual outcomes to include comparison with baseline measurements and established benchmarks;

(vi) that a sliding fee schedule and all available financial resources for support of services including third party insurance and parent payment are utilized;

(vii) there is an appropriate level of direct contributions by the school district; and

(viii) that services delivered are adequately documented to support the reimbursement received.

(2) Comprehensive school and community treatment must be provided through a program of services staffed by at least two mental health workers who work exclusively in the school with a maximum case load of 12 school children. At least one of the two mental health workers must be a licensed psychologist, licensed clinical social worker, or licensed professional counselor.

(a) Comprehensive school and community treatment must be provided according to an individualized treatment plan designed by a licensed professional who is a staff member of the comprehensive school and community treatment program.

(b) In addition to any clinical records required by mental health center license rules and by ARM 37.85.414, the program must maintain:

(i) documentation of the client's attendance in school and in program services;

(ii) progress notes for each individual therapy session and other direct service; and

(iii) weekly overall progress notes.

(3) Comprehensive school and community treatment is not medically necessary when, in the determination of the department, the individual is receiving substantial mental

health treatment outside the comprehensive school and community treatment program.

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

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

3. The rules as amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.2221 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), THERAPEUTIC FAMILY CARE TREATMENT SERVICES (1) The therapeutic portion of medically necessary therapeutic family care treatment is covered for recipients with a primary diagnosis of severe emotional disturbance (SED) as defined in ARM 37.86.3702, or with both an emotional disturbance and a developmental disability, if the treatment is ordered by a licensed physician, licensed psychologist, masters level licensed clinical social worker (MSW) or a licensed professional counselor (LPC), and prior-authorized by the department or its designee according to the provisions of ARM 37.88.101.

~~(a) The therapeutic portion of intensive level therapeutic family care treatment, as defined in ARM Title 37, chapters 37 and 97, is covered if provided by a therapeutic family care agency licensed by and contracted with the department to provide intensive level therapeutic family care service.~~

~~(b) (a)~~ The therapeutic portion of moderate level therapeutic family care treatment, as defined in ARM Title 37, chapters 37 and 97, is covered if provided by a therapeutic family care agency licensed by and contracted with the department to provide moderate level therapeutic family care service.

~~(c) (b)~~ The therapeutic portion of permanency therapeutic family care treatment, as defined in (2)(c)(i), is covered if provided by a therapeutic family care agency licensed by and contracted with the department to provide intensive therapeutic family care services.

(i) Permanency therapeutic family care treatment is intensive level therapeutic family care treatment for which the foster family placement is permanent and which includes:

- ~~(A) care coordination case management;~~
 - ~~(B) (A)~~ individual, family and group therapies;
 - ~~(C) (B)~~ clinical supervision provided by a licensed psychologist on a 1:20 ratio;
 - ~~(D) (C)~~ a treatment manager who is a masters or bachelors level social worker with three years experience, on a 1:6 ratio;
 - ~~(E) (D)~~ therapeutic aide services averaging at least 10 hours per week;
 - ~~(F) (E)~~ respite care at least one weekend per month; and
 - ~~(G) (F)~~ additional specialized training for families.
- ~~(d) (c)~~ Medicaid will not reimburse for room, board, maintenance or any other non-therapeutic component of therapeutic family care treatment.

(2) Medicaid reimbursement is not available for therapeutic youth family care services unless the provider submits to the department or its designee in accordance with

these rules a complete and accurate certificate of need that certifies the necessary level of care. A child or adolescent must meet at least four of the following criteria for moderate therapeutic family care treatment services and ~~five of the following criteria for intensive therapeutic family care treatment services:~~

(a) through (6) remain the same.

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

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

37.86.3506 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, SERVICE REQUIREMENTS (1) remains the same.

(2) ~~Intensive case~~ Case management services for adults with severe disabling mental illness must be provided according to a case management plan which must:

(a) through (f) remain the same.

(3) Objectives in an ~~intensive a~~ case management plan must have an identified date of review no more than 90 days after the plan date. Plans will be revised to reflect changes in client goals and needs, and the services provided to the client.

~~(4) Intensive case management services for adults with severe disabling mental illness must be provided by a provider whose individual case managers' case loads average no more than 22 adults per FTE (full-time equivalent) per calendar month, calculated including all of the provider's adult intensive case managers and adult case management clients for each calendar month.~~

~~(a) Individual intensive case manager case loads may include care coordination case management clients. For purposes of calculating the provider's average case load under (4), the first 1 through 4 care coordination clients served by each intensive case manager shall be counted as 1 intensive case management client, and each additional 1 through 4 care coordination clients shall be counted as 1 additional intensive case management client.~~

~~(b) The Montana medicaid program will cover and reimburse intensive case management services provided to adults with severe disabling mental illness only if provided by an intensive case manager whose services are limited to intensive case management and/or care coordination services, and who does not provide additional services such as therapy.~~

~~(5) (4) Intensive case~~ Case management services for adults with severe disabling mental illness must be delivered in accordance with the individual recipient's needs, ~~but in all cases where the client is in service for the entire month must include at least 2 hours of intensive case management services including 1 face-to-face contact with the client per calendar month.~~

~~(6) Care coordination case management services for adults with severe disabling mental illness must include at least 1 face-to-face contact with the client per month. The contact may be for purposes other than providing care coordination services, such as to provide another covered service.~~

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

37.86.3507 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, PROVIDER REQUIREMENTS (1) remains the same.

(2) ~~Intensive case~~ Case management services for adults with severe disabling mental illness must be provided by a licensed mental health center:

(a) and (b) remain the same.

~~(3) Care coordination case management services for adults with severe disabling mental illness must be provided by a licensed mental health center enrolled in the Montana medicaid program as a case management services provider.~~

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

37.86.3515 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, REIMBURSEMENT ~~(1) Intensive case management services for adults with severe disabling mental illness will be reimbursed on a case rate per month basis as provided in this rule. For purposes of this rule, a month is a calendar month, regardless of the variation in the number of days in each calendar month.~~

~~(2) For intensive case management services for adults with severe disabling mental illness, the provider may bill:~~

~~(a) the full monthly rate for:~~

~~(i) recipients in service on or before the 15th day of the calendar month and throughout the remainder of the calendar month; or~~

~~(ii) recipients in service at the beginning of the month and discharged on or after the 16th of the month; or~~

~~(b) one-half the monthly rate for:~~

~~(i) recipients in service on or after the 16th day of the calendar month and throughout the remainder of the calendar month; or~~

~~(ii) recipients in service and discharged on or before the 15th day of the month.~~

~~(3) (1) Care coordination case~~ Case management services for adults with severe disabling mental illness will be reimbursed on a fee per unit of service basis. For purposes of this rule, a unit of service is a period of 15 minutes.

~~(a) Medicaid reimbursement for care coordination case management services for adults with severe disabling mental illness is limited to a total of four hours (16 units of service) per calendar month.~~

~~(b) (2) Group care coordination services may not exceed a maximum of eight participants per group.~~

~~(c) A provider may not bill medicaid for care coordination services for any period for which the provider bills for intensive case management services for the same recipient.~~

~~(d) The Montana medicaid program will not pay more than one provider for intensive case management services for the same~~

~~period of time for the same resident.~~

~~(4) through (5)(b) remain the same but are renumbered (3) through (4)(b).~~

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

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

37.86.3705 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, SERVICE COVERAGE (1) through (1)(e) remain the same.

~~(2) Intensive case Case management services for youth with serious emotional disturbance are case management services provided by a licensed mental health center in accordance with these rules and the provisions of Title 50, chapter 5, part 2, MCA, and implementing rules.~~

~~(3) Care coordination case management services for youth with serious emotional disturbance are case management services, as specified in (1), provided in accordance with these rules by a licensed mental health center. Care coordination case management services may include telephone services.~~

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

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

37.86.3706 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, SERVICE REQUIREMENTS (1) remains the same.

~~(2) Intensive case Case management services for youth with serious emotional disturbance must be provided according to a case management plan which must:~~

~~(a) through (3) remain the same.~~

~~(4) Intensive case management services for youth with serious emotional disturbance must be provided by a provider whose individual case managers' case loads average no more than 20 youth per FTE (full-time equivalent) per calendar month, calculated including all of the provider's youth intensive case managers and youth case management clients for each calendar month.~~

~~(a) Individual intensive case manager case loads may include care coordination case management clients. For purposes of calculating the provider's average case load under (4), the first 1 through 4 care coordination clients served by each intensive case manager shall be counted as 1 intensive case management client, and each additional 1 through 4 care coordination clients shall be counted as 1 additional intensive case management client.~~

~~(b) The Montana medicaid program will cover and reimburse intensive case management services provided to youth with serious emotional disturbance only if provided by an intensive case manager whose services are limited to intensive case management and/or care coordination services, and who does not provide additional services such as therapy.~~

~~(5) (4) Intensive case Case management services for youth with serious emotional disturbance must be delivered in accordance with the individual recipient's needs, but in all cases where the~~

~~client is in service for the entire month must include at least 2 hours of intensive case management services including face-to-face contact with the client per calendar month.~~

~~(6) Care coordination case management services for youth with serious emotional disturbance must include at least 1 face-to-face contact with the client per month. The contact may be for purposes other than providing care coordination services, such as to provide another covered service.~~

AUTH: Sec. 53-6-113, MCA

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

37.86.3707 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER REQUIREMENTS (1) remains the same.

(2) ~~Intensive case~~ Case management services for youth with serious emotional disturbance must be provided by a licensed mental health center:

(a) with a license endorsement permitting the mental health center to provide intensive case management services to the population being served; and

(b) enrolled in the Montana medicaid program as a case management services provider; and

(c) contracted with the department to provide case management services for youth with serious emotional disturbance.

~~(3) Care coordination case management services for youth with serious emotional disturbance must be provided by a licensed mental health center enrolled in the Montana medicaid program as a case management services provider.~~

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

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

37.86.3715 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, REIMBURSEMENT (1) ~~Intensive case management services for youth with serious emotional disturbance will be reimbursed on a case rate per month basis as provided in this rule. For purposes of this rule, a month is a calendar month, regardless of the variation in the number of days in each calendar month.~~

(2) ~~For intensive case management services for youth with serious emotional disturbance, the provider may bill:~~

~~(a) the full monthly rate for:~~

~~(i) recipients in service on or before the 15th day of the calendar month and throughout the remainder of the calendar month; or~~

~~(ii) recipients in service at the beginning of the month and discharged on or after the 16th of the month; or~~

~~(b) one-half the monthly rate for:~~

~~(i) recipients in service on or after the 16th day of the calendar month and throughout the remainder of the calendar month; or~~

~~(ii) recipients in service and discharged on or before the~~

~~15th day of the month.~~

~~(3) (1) Care coordination case Case management services for youth with serious emotional disturbance will be reimbursed on a fee per unit of service basis. For purposes of this rule, a unit of service is a period of 15 minutes.~~

~~(a) Medicaid reimbursement for care coordination case management services for youth with serious emotional disturbance is limited to a total of four hours (16 units of service) per calendar month.~~

~~(b) (2) Group care coordination services may not exceed a maximum of eight participants per group.~~

~~(c) A provider may not bill medicaid for care coordination services for any period for which the provider bills for intensive case management services for the same recipient.~~

~~(d) The Montana medicaid program will not pay more than one provider for intensive case management services for the same period of time for the same resident.~~

~~(4) (3) The department may, in its discretion, designate a single provider to provide intensive case management services in a designated geographical region. Any provider designated as the sole intensive case management provider for a designated geographical region must, as a condition of such designation, agree to serve the entire designated geographical region.~~

~~(5) The department will reimburse for up to three months of medically necessary intensive case management services while a youth is authorized to receive either therapeutic youth group home services or therapeutic family care treatment services.~~

~~(6) through (6)(b) remain the same but are renumbered (4) through (4)(b).~~

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

37.88.101 MEDICAID MENTAL HEALTH SERVICES, AUTHORIZATION REQUIREMENTS (1) through (1)(b) remain the same.

(2) For all mental health services provided to a medicaid recipient under the age of 18 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 for youth under the age of 18 years 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 (2)(c) be granted more than 30 days after the initial date of service.~~

(3) For all mental health services provided to an adult medicaid recipient under the Montana medicaid program for which prior authorization is required, the following exceptions apply:

(a) 16 visits in the 12-month period beginning July 1, 2003 and each 12-month period thereafter for outpatient mental health counseling services billed under Current Procedure Terminology 4th Edition (CPT4) codes 90804, 90806, 90810, 90812, 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; and

(b) eight visits in the period from January 1, 2003 through June 30, 2003 for outpatient mental health counseling services billed under CPT4 codes 90804, 90806, 90810, 90812, 90846 and 90847 only.

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

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

(b) 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.

(5) The prior authorization requirement shall not be waived except as provided in this rule.

(6) Under no circumstances may a waiver under (4) be granted more than 30 days after the initial date of service.

(3) through (6) remain the same but are renumbered (7) through (10).

AUTH: Sec. 53-6-113, MCA

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

37.88.1106 INPATIENT PSYCHIATRIC SERVICES, REIMBURSEMENT

(1) through (9) remain the same.

(10) Reimbursement will be made to a residential treatment facility provider for intensive day treatment in the amount specified in the department's medicaid mental health fee schedule. The per diem rates specified in the department's medicaid mental health fee schedule are bundled prospective per diem rates for full-day programs and half-day programs as defined in ARM 37.88.1101. The department hereby adopts and incorporates herein by reference the department's medicaid mental health fee schedule dated ~~March 2001~~ January 1, 2003. A

copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

(11) through (13) remain the same.

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

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

37.88.1110 FRONTIER SERVICE ACCESS RATE ADJUSTMENT PAYMENT, ELIGIBILITY AND COMPUTATION (1) Subject to the availability of sufficient county and federal funding, the department will pay, in addition to the established medicaid rates provided in ARM 37.88.907, a frontier service access rate adjustment payment to an eligible community mental health center in Montana as defined at 53-21-201, MCA when:

(a) through (d) remain the same.

(e) the community mental health center has executed and entered into a written agreement with the department concerning rural access to services and the provision of telephone crisis services and has agreed to abide by the terms of the written agreement.

(i) The written agreement between the department and the community mental health center must be executed prior to the issuance of the frontier service access rate adjustment payment.

(ii) A community mental health center that does not enter into a written agreement with the department or does not abide by the terms of the agreement will not be eligible for the frontier service access rate adjustment payment process.

(2) The department will calculate the amount of the frontier service access rate adjustment payment for each eligible community mental health center using paid claims data from ~~frontier counties in the~~ community mental health center region established pursuant to 53-21-204, MCA, for the quarter ending one quarter before the quarter in which the frontier service access rate adjustment payment will be paid. The frontier service access rate adjustment payment for each eligible community mental health center shall be the least of:

(a) remains the same.

(b) the amount of county funds transferred to the department and any state funds the department chooses to use for this purpose plus federal financial participation; or

(c) ~~a premium over the established rates consisting of the sum of:~~ determined by the department but not to exceed 25%.

~~(i) 20% over the established rate for outpatient services provided by psychiatrists, other physicians, physician assistants, advance practice registered nurses, licensed psychologists, licensed clinical social workers, licensed clinical professional counselors and in-training practitioners as defined in ARM 37.88.901 to eligible beneficiaries residing in frontier counties; and~~

~~(ii) 25% over the established rate for case management, community-based psychiatric rehabilitation and support services provided to eligible beneficiaries residing in frontier counties.~~

(3) No aggregate rate of medicaid reimbursement, including

established medicaid rate and frontier service access rate adjustment payments, for all community mental health centers shall exceed the corresponding medicare rate, if any.

(4) For the community mental health centers eligible for the frontier service access rate adjustment payment, the department will pay the frontier service access rate adjustment payment quarterly beginning July 1, 2001.

(5) The department shall include all frontier service access rate adjustment payments in the department's quarterly reports as required by federal law and regulations.

(6) The frontier service access rate adjustment payment is subject to the restrictions imposed by federal law.

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

IMP: Sec. 53-6-101, 53-6-113 and 53-21-201, MCA

4. The Department is proposing the adoption of new Rule I and these rule amendments to make permanent the emergency program changes and a revised fee schedule for mental health services provided to Medicaid recipients and Mental Health Services Plan (MHSP) beneficiaries adopted January 15, 2003, at page 115 of the 2003 Montana Administrative Register, issue number 2. Pursuant to ARM 37.86.3715 the Department will continue to designate providers of case management services for youth with serious emotional disturbances. The reimbursement unit for case management for youth with serious emotional disturbances and adults with severe disabling mental illness would be changed to 15 minutes. Provider rates for mental health services would be reduced from 5% to 10% as reflected in the Department's fee schedule that is available on the Department's website as stated in this notice. This fee schedule would apply to MHSP services as well as to Medicaid mental health services.

The Department also proposes the permanent adoption of new Rule I, reinstating Comprehensive School and Community Treatment (CSCT) for youth with serious emotional disturbance. This service was eliminated in August 2002 and is being reinstated using funding provided by the Office of Public Instruction as the non-federal match for the Medicaid-funded service. ARM 37.86.2207 would be amended accordingly. The amended text of that rule will appear in a subsequent notice of public hearing on rules that make other changes to Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services.

The Department amended the rules for frontier rate payments and extended the concept to establish 'service access' rates. These enhanced rates will be paid to community mental health centers that agree to provide access to service in rural parts of the state and agree to provide telephone crisis services to the public.

New Rule I

The Department proposes to make permanent reimbursement for CSCT

under EPSDT. CSCT services were eliminated August 16, 2002 in an attempt to reduce costs. The Department believed the cost savings from eliminating CSCT services would prevent the elimination of other services or the limitation of eligibility for public health programs and ensure expenditures would not exceed the legislative appropriation.

With the elimination of CSCT services, many school-based programs closed, limiting mental health access in rural communities. The Department has been working with the Office of Public Instruction (OPI) and the Centers for Medicare and Medicaid Services to implement a "certification of match" process for certain school-based health services, including CSCT. This process allows OPI to certify that some of its funding of school services constitutes non-federal match for Medicaid-funded services such as CSCT services without the use of Department general fund appropriations.

Reinstatement of CSCT in January, 2003 significantly improved the quality of services provided for eligible youth in rural areas. With CSCT, providers are better able to consult and collaborate with teachers, work with community agencies and support eligible students in the classrooms. With the reinstatement of CSCT, the Department expects to see a significant decrease in other children's mental health care costs. The Department projects general fund savings of \$135,350 in FY 2003 due to reductions in other services.

ARM 37.86.2207 and 37.88.1106

The amendments to these administrative rules update references to the most current fee schedule for Medicaid Mental Health Services. Since the Mental Health Services Plan's reimbursement rule, ARM 37.89.125, refers to this fee schedule, MHSP rates would be reduced accordingly. The new fee schedule includes a rate reduction from 5% to 10%. The revised fee schedule can be viewed at the Department's website. A copy of the fee schedule can be obtained by writing the Department at the address listed in the rules.

For purposes of clarity and simplification, the changes to ARM 37.86.2207 that were shown in the emergency notice will appear in a subsequent notice containing other changes to the EPSDT program that will include additional changes to that rule.

ARM 37.86.2221

The Department proposes permanent elimination of intensive level therapeutic family care as a service for youth with serious emotional disturbances. The rule formerly combined moderate therapeutic family care with a requirement that a youth be provided 10 hours of therapeutic aide services per week. The absolute requirement for 10 hours of aide services per week restricts families and providers who found it difficult to

address the specific needs of each child. The Department will still allow the use of therapeutic aide services for youth in therapeutic family care to the extent that the service is medically necessary and appropriate to the needs of each individual child. The alternative is to retain the service with families being required to accept either no support services (moderate level) or more than are needed (intensive level). If the service is not eliminated, other service reductions will be necessary to address the Department's projected budget deficit.

ARM 37.86.3506, 37.86.3507, and 37.86.3515

The proposed amendments to these rules would change the requirements and reimbursement methodology for case management services for adults with severe disabling mental illness. Under the amended rules, this service will be provided in 15-minute units. Care coordination case management has been eliminated as a less intensive form of case management. Requirements for caseload size and minimum contact have also been eliminated. The changes to this service are part of the Department's budget reduction plan. If this change is not made, the projected savings would have to be realized elsewhere in the mental health budget.

ARM 37.86.3705, 37.86.3706, 37.86.3707, and 37.86.3715

The proposed amendments change the requirements and reimbursement methodology for case management services for youth with serious emotional disturbance. Under the proposed amendment, this service will be provided in 15-minute units. Care coordination case management has been eliminated as a less intensive form of case management. Requirements for caseload size and minimum contact have also been eliminated. The changes to this service are part of the Department's budget reduction proposal. If this change were not made, the projected savings would have to be realized elsewhere in the mental health budget.

ARM 37.88.101

The proposed amendment to this rule would continue the emergency fixed limit of 16 outpatient therapy sessions that will be reimbursed for adult Medicaid recipients without prior authorization. The department is taking this opportunity to delete the transitional provisions contained in (2)(b). The proposed amendment also eliminates procedure codes 90808 (individual psychotherapy 75 to 80 minutes) and 90814 (individual psychotherapy interactive 75 to 80 minutes) as reimbursable procedures for both youth and adult recipients of Medicaid mental health services. These codes define therapy services that are approximately 75 to 80 minutes in duration. These procedure codes were intended for exceptional circumstances rather than routine services. The changes to this service are part of the Department's budget reduction proposal. If this change is not made, the projected savings will have to be realized elsewhere in the mental health budget.

ARM 37.88.1110

The Department has offered a Medicaid mental health services 'frontier rate' for Medicaid mental health services provided in the most rural counties by community mental health centers since 2001. The Department extended the concept of frontier rate by amending ARM 37.88.1110 to establish 'service access' rates. These enhanced rates are paid to community mental health centers that agree to provide access to services in rural parts of the state and agree to provide telephone crisis services to the public. The enhanced rates are in recognition of the increased cost of providing the required access to services in those areas. Funding for the enhanced rates comes in part from county funds transferred to the Department for this purpose. The Department intends to use a portion of the transferred county funds to fund the premium service access rates and a portion to fund other Medicaid mental health services.

5. The Department proposes that these proposed rule changes be effective May 15, 2003.

6. The estimated financial impact of these proposed changes is a reduction in expenditures of \$5,915,826 total funds and \$2,180,442 general fund for the remainder of SFY03. The changes will impact every individual and agency providing services through the Medicaid Mental Health Program and the Mental Health Services Plan.

7. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on April 24, 2003. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

8. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State March 17, 2003.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 10.55.1003, 10.57.107,	)	AND TRANSFER
10.57.110, 10.57.201, 10.57.201A,)	
10.57.215, 10.57.220, 10.57.411,)	
10.57.418, 10.57.419, 10.57.431,)	
10.57.432, 10.57.436, 10.57.604,)	
and 10.57.611 relating to)	
accreditation and educator)	
licensure and the amendment and)	
transfer of ARM 10.57.113 relating)	
to substitute teachers)	

TO: All Concerned Persons

1. On January 30, 2003, the Board of Public Education published MAR Notice No. 10-57-226 regarding the public hearing on the proposed amendment of rules concerning accreditation and educator licensure and the proposed amendment and transfer of a rule concerning substitute teachers at page 76 of the 2003 Montana Administrative Register, Issue Number 2.

2. After consideration of the comments received, the Board of Public Education has amended and transferred the rules exactly as proposed.

3. The Board of Public Education has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received and the Board's responses.

ARM 10.55.1003

COMMENT NO. 1: Rachel A. Vielleux, Missoula County Superintendent of Schools submitted a written comment objecting to the amendment of this rule. She stated that the Board of Public Education does not dictate that a district must provide daily instruction in other programs and feels that it is unnecessary to do so in this instance. She further stated that the statement about teacher preparation does not belong in the generalized program foundation standards but rather should be moved to ARM 10.55.708.

COMMENT NO. 2: Rick Chiotti, Division Administrator/Health Enhancement and Safety, Office of Public Instruction testified in support of the proposed rule change. He stated that this amendment was a "best practice" recommendation and was not mandatory. This amendment was recommended by the Health Enhancement and Safety Division as a goal for schools to work toward in light of the serious health problems that affect school children. He stated that placing the recommendation that teachers have 10 semester credits when teaching departmentalized

grades 5-8 in ARM 10.55.708 would make that provision mandatory.

COMMENTS NO. 3 AND 4: Erik Burke, representing MEA-MFT and Bob Vogel representing the Montana School Boards Association both testified that they were in support of ARM 10.55.1003 as written and objected to moving the teacher preparation language to ARM 10.55.708.

COMMENTS NO. 5 AND 6: William J. Bartholomew, Principal, East Middle School and Glen A. Johnson, Ed.D., Principal Butte High School submitted written comments objecting to the requirement to have elementary teachers have at least 10 semester credits in each area taught when teaching in departmentalized grades 5-8.

RESPONSE: The Board of Public Education thanks all commentors for their comments. The Board believes that healthy kids make better students and better students make healthy communities. Improving the health of kids and their ability to learn is an intended outcome of a broad based, fully integrated health enhancement program that is (a) offered to all grades, including daily to elementary students to help them frame the most healthful decisions they will be making as they mature, (b) taught by highly qualified teachers, and (c) addresses health knowledge, attitudes and skills and develops physical fitness and lifelong physical activity.

The amendment reflects the input from school administrators and teachers during the developmental stage of the proposed rule amendment. The comments received were clear in their support for emphasizing positive impact on the health of adolescents and for encouraging (rather than requiring) schools to adopt "best practice" regarding health enhancement instruction. The proposed amendment is not mandatory. This "best practice" approach establishes a program foundation that schools should work toward to gain a positive impact on health behaviors of adolescents. The Board amends ARM 10.55.1003 as proposed.

ARM 10.57.113

COMMENTS NO. 7 AND 8: Erik Burke and Bob Vogel also testified regarding the 35 consecutive day requirement for certified substitute teachers. They stated that they would support the amendment at this time but feel that this issue merits further study by CSPAC. They feel it is best to have certified teachers in classrooms when the regular teacher is not available for extended periods of time that may not be consecutive.

RESPONSE: The Board of Public Education thanks Mr. Burke and Mr. Vogel for their comments. The term "consecutive" is being added to subsection (1)(b) so that it is consistent with subsection (1)(a) of this rule which allows substitute teachers to be employed for periods of time not to exceed 35 consecutive

days. The Board amends ARM 10.55.113 as proposed and transfers the same to ARM 10.55.716.

COMMENT NO. 9: Jerry House, Superintendent of Whitefish Public Schools requested that the Board of Public Education review and amend current policy to allow for reciprocal agreements between states for librarians who have met that state's certification process.

RESPONSE: The Board of Public Education thanks Mr. House for his comments. Mr. House's request is outside of the scope of these proposed rule amendments and therefore cannot be considered at this time.

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

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

Certified to the Secretary of State March 17, 2003.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 17.58.311 and 17.58.342)
pertaining to reimbursable)
expenses from the Petroleum)
Tank Release Compensation Fund)

CORRECTED NOTICE OF
AMENDMENT

(PETROLEUM BOARD)

TO: All Concerned Persons

1. On November 27, 2002, the Petroleum Tank Release Compensation Board published MAR Notice No. 17-184 regarding the proposed amendment of the above-stated rules at page 3204, 2002 Montana Administrative Register, issue number 22. On January 16, 2003, the Board published the notice of amendment of the rules at page 11, 2003 Montana Administrative Register, issue number 1.

2. This corrected notice of amendment is being published to reflect that the language "(4) through (21) remain the same, but are renumbered (5) through (22)" should have been "(3) through (21) remain the same, but are renumbered (4) through (22)".

17.58.311 DEFINITIONS Unless the context clearly indicates otherwise, the following definitions, in addition to those in 75-11-302, MCA, apply throughout this chapter:

(1) through (3) remain as adopted.

(3) through (21) remain the same, but are renumbered (4) through (22).

Reviewed by:

PETROLEUM TANK RELEASE
COMPENSATION BOARD

James M. Madden

JAMES M. MADDEN

Rule Reviewer

By: Tim Hornbacher

TIM HORNbacher

Chairman

Certified to the Secretary of State, March 17, 2003.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 8.61.404 and)
8.61.1203, pertaining to fees)

TO: All Concerned Persons

1. On January 16, 2003, the Board of Social Work Examiners and Professional Counselors (Board) published MAR Notice No. 8-61-17 regarding the public hearing on the proposed amendment of the above-stated rules relating to fees at page 1 of the 2003 Montana Administrative Register, Issue Number 1.

2. On February 7, 2003, a public hearing on the proposed amendment of the above-stated rules was conducted in Helena. Public comments were made at the hearing in response to the proposed amendment of ARM 8.61.404 and 8.61.1203. Written comments were also received.

3. The Board has thoroughly considered all of the comments made regarding the proposed amendments. A summary of the comments received and the Board's responses are as follows:

Comment 1: M. Steven Gliko commented in support of the increase in fees at this time.

Response 1: The Board thanks the commenter for his support.

Comment 2: Kathleen Kennedy asked whether the salary of the board administrator might increase with the increase in fees, and whether the fee increase might be according to how long a person has been licensed.

Response 2: The Board concluded that there will be no increase in the administrator's salary and the fees will not be calculated according to length of licensure.

Comment 3: Cordelia Slater stated the proposed increase is too much of an increase, and is especially difficult in conjunction with a drastic cut in Medicare funds.

Response 3: The Board believes that the proposed new fee levels are still lower than the Board fees in the late 1980s, and states that the last fee increase was over 12 years ago. The Board acknowledges the concern over the increase, and states that costs have increased and it is necessary to now raise fees. The Board understands that other licensee costs have increased, but cannot consider anything other than Board costs and implementing fees commensurate with those costs.

Comment 4: The Montana Chapter of the National Association of Social Workers (NASW-MT), Leotta Chiesa, LCSW, and Barb Belt, LCSW, expressed concern over the amount of increase. They asked what would cause a 100% increase in fees now, with no fee changes in 13 years, and since the Board initiated cost saving changes (no longer maintaining licensees' CE records and utilizing on-line renewals) recently. Commenters stated that it appears to be more costly to do business with the Department of Labor and Industry than with the Department of Commerce and questioned why. The NASW-MT states that Governor Martz has taken a "no new taxes" stance, but that the increase in fees seems to be a new tax. Commenters asked if the Board would consider the fee increase to cover a two-year renewal period instead of one-year? The NASW-MT invited the Board to attend a NASW-MT Board of Directors meeting in the future.

Response 4: The Board concludes that it is necessary to increase fees as the costs of fulfilling the Board's statutory mandate of protecting the public have increased, including the reality of litigation and other costs. The cost of doing business changes from time to time and has increased for the Board now, although the Board's fees remained low for quite a length of time. Financially, the Board has no other options. The Board reduced fees in 1991 by \$50 and continuously reviews and addresses the fee levels. This is a fee increase, not a tax. The Board does not believe there is any correlation between the transfer to the Department of Labor and Industry and the necessity of a fee increase. The Board is proposing to increase fees for a one-year cycle, but may consider a two-year renewal in the future. The Board thanks the NASW-MT for the meeting invitation.

Comment 5: Bernadette Pedersen commented that the fee increase appeared to be a 100% increase and asked that any increase be commensurate with the Oracle database costs and other necessary costs in the Board's budget.

Response 5: The proposed fee increases are commensurate with the Board's costs, including the Oracle database.

Comment 6: Liz Muhs Stone questioned the doubling of fees in only 13 years. She stated that the increase is much higher than the rate of inflation and is concerned that the fee increase is another "band-aid" solution to the State's budget crisis.

Response 6: Board fees are not combined with the state's general fund. Licensure fees fund the costs of board functions. The fee increase will not be applied to the state's budget deficit. The Board based the proposed fee increase on the budgetary demands as best projected for the next fiscal year.

Comment 7: Tim Nordstrom, LCSW, and Tanis Lincoln, MSW, LCSW, oppose the large amount of the fee increase as it further increases the economic burden of maintaining a licensed status.

Response 7: The board addresses these concerns in Response 3.

Comment 8: Lisa Lysne, LCSW, asked why the Board needs more at this time and if a fee increase will show increased Board responsiveness in licensing and continuing education processes.

Response 8: The Board has proposed to increase fees commensurate with the costs of doing business. The Board's primary concern is to protect the public, but the Board and its staff continuously strive to provide timely and quality responses to all inquiries.

Comment 9: Nona Chambers stated that the increase in social workers fees is too much and questions the difference in licensing fees between this board and the physical therapists.

Response 9: The Board is proposing to increase the fees solely based upon the increased costs of doing business as a licensing board. The Board cannot consider differences between licensure fees of various professions.

Comment 10: Jean Perrier, MSW, LCSW, opposes the fee increase now when other costs are also increasing, and wants to make sure the fee increase is justified at this time when money is scarce.

Response 10: The Board addresses these comments in prior responses.

Comment 11: Sarah Seiler, LCSW, LAC, asked if the Board had considered the variance in income levels between social workers and plumbers or attorneys when proposing the fee increase.

Response 11: The Board is proposing to increase the fees solely based upon the increased costs of doing business as a licensing board. The Board cannot consider differences between income levels of various professions.

Comment 12: Joshua Leblang stated that instantly doubling the licensure fees is an undue burden and asked what additional services will be provided for the increase in fees.

Response 12: The fee increase is commensurate with the Board's projected costs of doing business and protecting the public. Following the fee increase, the Board and the staff will continue to function to protect the public, respond to inquiries and assist licensees and applicants.

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

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
RICHARD SIMONTON, CHAIR

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

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

Certified to the Secretary of State March 17, 2003.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 37.86.3502,)
37.89.103, 37.89.114,)
37.89.115 and 37.89.118)
pertaining to mental health)
services plan covered)
services)

TO: All Interested Persons

1. On December 26, 2002, the Department of Public Health and Human Services published MAR Notice No. 37-257 regarding the public hearing on the proposed amendment of the above-stated rules relating to mental health services plan covered services, at page 3545 of the 2002 Montana Administrative Register, issue number 24.
2. The Department has amended ARM 37.86.3502, 37.89.103, 37.89.114, 37.89.115 and 37.89.118 as proposed.
3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State March 17, 2003.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Amendment) NOTICE OF AMENDMENT
of Rules Pertaining)
to Pipeline Safety)

TO: All Concerned Persons

1. On October 31, 2002, the Department of Public Service Regulation, Public Service Commission (PSC) published MAR Notice No. 38-2-169 regarding the public hearing on the proposed amendment of ARM 38.5.2202 and 38.5.2302 concerning pipeline safety, at page 2980 of the 2002 Montana Administrative Register, issue number 20.

2. The PSC has amended ARM 38.5.2202 and 38.5.2302 exactly as proposed.

3. No comments or testimony were received.

/s/ Bob Rowe
Bob Rowe, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE MARCH 17, 2003.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 42.22.101 and 42.22.121)
relating to the taxation of)
railroad car companies)

TO: All Concerned Persons

1. On January 30, 2003, the department published MAR Notice No. 42-2-710 regarding the public hearing on the proposed amendments of ARM 42.22.101 and 42.22.121 relating to taxation of railroad car companies, at page 100 of the 2003 Montana Administrative Register, issue no. 2.

2. A public hearing was held on February 27, 2003, to consider the proposed amendments. Oral comments were received at the hearing and are summarized as follows along with the response of the department:

COMMENT NO. 1: Mary Whittinghill, representing the Montana Taxpayers Association (MonTax), telephoned the Hearing Examiner prior to the hearing to advise that she was unable to attend the hearing but requested the record reflect MonTax's support for the amendments to the rules.

RESPONSE NO. 1: The department appreciates the support extended by MonTax and, as requested, it was noted on the record.

COMMENT NO. 2: Louis A. Mazzuca, testified on behalf of GE Capital Rail Services Corporation, ACF Industries, General American Transportation Corporation, and Detroit Edison Company. Mr. Mazzuca stated support for the amendments and extended thanks to the department on behalf of the representing entities for the department's efforts in preparing and presenting the amendments to the rules.

RESPONSE NO. 2: The department appreciates the support presented by GE Capital Rail Services Corporation, ACF Industries, General American Transportation Corporation and Detroit Edison Company for the rule amendments.

COMMENT NO. 3: Robert Zwartz, representing Union Tank Car Company; Douglas Thornley, representing GATX Corporation; and Milan Vrabec, representing TTX Company all spoke in support of the amendments to the rules and thanked the department for its efforts.

RESPONSE NO. 3: The department appreciates the support and comments from Union Tank Car Company, GATX Corporation, and TTX Company.

3. The department testified at the hearing that an additional amendment would be necessary to clarify conflicting dates which appear in ARM 42.22.121. Therefore, based on that testimony, the rule is further amended as follows:

42.22.121 ALLOCATION PROCEDURE (1) through (8) remain as proposed.

(9) A speed study must include a statistically valid sample of the cars that reside or travel in the state, and must include data from one month, the month to be determined by the department. The department shall identify to the railcar companies the month to be utilized in the speed study by February 1 of the PRIOR tax year.

(10) FOR TAX YEAR 2004, THE DEPARTMENT SHALL IDENTIFY TO THE RAILCAR COMPANIES THE MONTH TO BE UTILIZED IN THE SPEED STUDY BY MAY 1, 2003.

(10) through (16) remain as proposed but are renumbered (11) through (17).

AUTH: Sec. 15-23-108, MCA

IMP: Sec. 15-23-211 and 15-23-213, MCA

4. Therefore, the department amends ARM 42.22.101 as proposed and amends ARM 42.22.121 with the amendments shown above.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State March 17, 2003

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

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

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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 February 2003, appear. Vacancies scheduled to appear from April 1, 2003, through June 30, 2003, 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 March 6, 2003.

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 FEBRUARY 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Aging Advisory Council (Public Health and Human Services)			
Ms. Pat Ludwig	Governor	Hutchison	2/26/2003
Chester			7/18/2004
Qualifications (if required):	public member		
Alternative Livestock Advisory Council (Livestock and Fish, Wildlife, and Parks)			
Mr. John Lane	Governor	not listed	2/4/2003
Cascade			1/1/2005
Qualifications (if required):	representative of the Fish, Wildlife, and Parks Commission		
Ms. Meg Smith	Governor	reappointed	2/4/2003
Divide			1/1/2005
Qualifications (if required):	representative of the Board of Livestock		
Board of Banking (Administration)			
Mr. Robert J. Gersack	Governor	Drummond	2/26/2003
Billings			7/1/2003
Qualifications (if required):	state bank officer for a large sized bank		
Board of Chiropractors (Labor and Industry)			
Ms. Jo Ausk	Governor	reappointed	2/5/2003
Terry			1/1/2006
Qualifications (if required):	public member		
Dr. Pamela Blanchard	Governor	reappointed	2/5/2003
Great Falls			1/1/2006
Qualifications (if required):	chiropractor		
Board of Labor Appeals (Labor and Industry)			
Mr. Jerome Loendorf	Governor	Donaldson	2/19/2003
Helena			1/1/2007
Qualifications (if required):	attorney		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Medical Examiners (Labor and Industry) Mr. Dwight Thompson Harlowton Qualifications (if required): physician assistant-certified	Governor	Krueger	2/24/2003 9/1/2005
Dr. James Upchurch Crow Agency Qualifications (if required): doctor of medicine	Governor	McEvoy	2/24/2003 9/1/2005
Board of Occupational Therapy Practice (Labor and Industry) Ms. L. Delores Gilbert Sidney Qualifications (if required): public member	Governor	Tamietti	2/5/2003 12/31/2006
Ms. Elspeth Richards Missoula Qualifications (if required): occupational therapist	Governor	reappointed	2/5/2003 12/31/2006
Board of Pardons and Parole (Corrections) Sen. Don Hargrove Belgrade Qualifications (if required): auxiliary member	Governor	McKee	2/3/2003 1/1/2007
Rep. Ken Peterson Billings Qualifications (if required): attorney	Governor	Fleming	2/3/2003 1/1/2007
Board of Personnel Appeals (Labor and Industry) Mr. Patrick Dudley Butte Qualifications (if required): representative of substitute management with collective bargaining experience	Governor	Maronick	2/6/2003 1/1/2007

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Personnel Appeals (Labor and Industry) cont. Mr. Joe Dwyer Billings Qualifications (if required): representative of labor	Governor	reappointed	2/6/2003 1/1/2007
Mr. Steve Johnson Missoula Qualifications (if required): representative of management with collective bargaining experience	Governor	reappointed	2/6/2003 1/1/2007
Board of Public Assistance (Public Health and Human Services) Ms. Carole Graham Missoula Qualifications (if required): public member	Governor	Larson	2/4/2003 1/1/2007
Board of Public Education (Board of Public Education) Mr. Storrs M. Bishop Ennis Qualifications (if required): Republican from District 2	Governor	reappointed	2/1/2003 2/1/2010
Board of Real Estate Appraisers (Labor and Industry) Mr. Douglas Mackay Billings Qualifications (if required): real estate appraiser	Governor	Moss	2/4/2003 5/1/2005
Board of Regents of Higher Education (Commissioner of Higher Education) Rep. Lila V. Taylor Busby Qualifications (if required): representative of District 4 and a Republican	Governor	Thompson	2/1/2003 2/1/2010

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Social Work Examiners and Professional Counselors (Labor and Industry)			
Dr. Leta Livoti Thompson Falls	Governor	reappointed	2/3/2003 1/1/2007
Qualifications (if required): licensed professional counselor			
Ms. Antoinette Rosell Billings	Governor	reappointed	2/3/2003 1/1/2007
Qualifications (if required): licensed professional counselor			
Judge Richard A. Simonton Glendive	Governor	reappointed	2/3/2003 1/1/2007
Qualifications (if required): public member and an attorney			
Commission for Human Rights (Labor and Industry)			
Mr. Jack Copps Seeley Lake	Governor	reappointed	2/25/2003 1/1/2007
Qualifications (if required): public member			
Mr. Ryan Rusche Wolf Point	Governor	Ogren	2/25/2003 1/1/2007
Qualifications (if required): public member			
Governor's Wolf Management Advisory Council (Fish, Wildlife, and Parks)			
Mr. Terry Beaver Helena	Governor	not listed	2/26/2003 2/26/2005
Qualifications (if required): public member			
Dr. Charles E. Buehler Butte	Governor	not listed	2/26/2003 2/26/2005
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Wolf Management Advisory Council (Fish, Wildlife, and Parks) cont.			
Mr. Dan Carney	Governor	not listed	2/26/2003
Browning			2/26/2005
Qualifications (if required):	public member		
Mr. James Cross	Governor	not listed	2/26/2003
Kalispell			2/26/2005
Qualifications (if required):	public member		
Ms. Darlyne Dascher	Governor	not listed	2/26/2003
Fort Peck			2/26/2005
Qualifications (if required):	public member		
Mr. Hank Fischer	Governor	not listed	2/26/2003
Missoula			2/26/2005
Qualifications (if required):	public member		
Rep. Chase Hibbard	Governor	not listed	2/26/2003
Helena			2/26/2005
Qualifications (if required):	public member		
Ms. Robin Hompesch	Governor	not listed	2/26/2003
Bozeman			2/26/2005
Qualifications (if required):	public member		
Mr. Jay Kirkpatrick	Governor	not listed	2/26/2003
Billings			2/26/2005
Qualifications (if required):	public member		
Mr. Bruce Malcolm	Governor	not listed	2/26/2003
Emigrant			2/26/2005
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Wolf Management Advisory Council (Fish, Wildlife, and Parks) cont.			
Mr. Bruce Tutvedt Kalispell	Governor	not listed	2/26/2003 2/26/2005
Qualifications (if required): public member			
Dr. Nelson Wert Townsend	Governor	not listed	2/26/2003 2/26/2005
Qualifications (if required): public member			
Historical Records Advisory Council (Historical Society)			
Ms. Samantha K. Pierson Libby	Governor	Foster	2/26/2003 9/24/2004
Qualifications (if required): public member			
Montana Children's Trust Fund Board (Public Health and Human Services)			
Ms. Jani McCall Billings	Governor	Bullis	2/26/2003 1/1/2006
Qualifications (if required): public member			
Montana Grass Conservation Commission (Natural Resources and Conservation)			
Mr. Larry Brence Baker	Governor	Brown	2/19/2003 1/1/2006
Qualifications (if required): public member			
Mr. Gary Unruh Chinook	Governor	reappointed	2/19/2003 1/1/2006
Qualifications (if required): grazing district director			
Small Business Compliance Assistance Advisory Council (Environmental Quality)			
Mr. Ralph Hamler Virginia City	Governor	Newton	2/14/2003 10/1/2005
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Small Business Compliance Assistance Advisory Council (Environmental Quality) cont.			
Ms. Lora Schultz Billings	Governor	Williams	2/14/2003 10/1/2005
Qualifications (if required): public member			
State Workforce Investment Board (Labor and Industry)			
Mr. Bruce N. Day Helena	Governor	Mendenhall	2/11/2003 0/0/0
Qualifications (if required): representative of business			
Mr. James E. Reno Billings	Governor	Crismore	2/11/2003 0/0/0
Qualifications (if required): chief elected official			
Teachers' Retirement Board (Administration)			
Ms. Mona Bilden Miles City	Governor	Durr	2/11/2003 7/1/2006
Qualifications (if required): teacher who is active in the retirement system			
Western Interstate Commission on Higher Education (Commissioner of Higher Education)			
Mr. Carrol Krause Helena	Governor	Crofts	2/19/2003 6/19/2005
Qualifications (if required): representing educators in higher education			

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Athletics (Commerce) Ms. Anita Vandolah, Conrad Qualifications (if required): public member	Governor	4/24/2003
Board of Clinical Laboratory Science Practitioners (Commerce) Ms. Susan Pullman, Butte Qualifications (if required): clinical laboratory science practitioner	Governor	4/16/2003
Ms. Doris Knox, Winifred Qualifications (if required): public member	Governor	4/16/2003
Ms. Karen McNutt, Sidney Qualifications (if required): clinical laboratory science practitioner	Governor	4/16/2003
Board of County Printing (Commerce) Mr. Verle L. Rademacher, White Sulphur Springs Qualifications (if required): representative of the printing industry	Governor	4/1/2003
Ms. Nancy Clark, Ryegate Qualifications (if required): public member	Governor	4/1/2003
Mr. Curtis Starr, Malta Qualifications (if required): representative of the printing industry	Governor	4/1/2003
Ms. Marianne Roose, Eureka Qualifications (if required): County Commissioner	Governor	4/1/2003
Ms. Julie Jordan, Miles City Qualifications (if required): County Commissioner	Governor	4/1/2003
Board of Hail Insurance (Agriculture) Mr. Larry Barbie, Inverness Qualifications (if required): public member	Governor	4/18/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Nursing Home Administrators (Commerce) Ms. Lori Henderson, Havre Qualifications (if required): nursing home administrator	Governor	5/28/2003
Board of Optometry (Commerce) Ms. Charliene Staffanson, Deer Lodge Qualifications (if required): public member	Governor	4/3/2003
Dr. Larry Obie, Havre Qualifications (if required): registered optometrist	Governor	4/3/2003
Board of Plumbers (Commerce) Ms. Jo Hawkins, Helena Qualifications (if required): public member	Governor	5/4/2003
Mr. Greg Butts, Helena Qualifications (if required): sanitary engineer	Governor	5/4/2003
Mr. Robert Metcalf, Bozeman Qualifications (if required): journeyman plumber	Governor	5/4/2003
Mr. Stephen R. Nelson, Great Falls Qualifications (if required): master plumber	Governor	5/4/2003
Board of Plumbers (Labor and Industry) Ms. Margaret Laknar, Dillon Qualifications (if required): public member	Governor	5/4/2003
Board of Real Estate Appraisers (Commerce) Mr. David Heine, Kalispell Qualifications (if required): real estate appraiser	Governor	5/1/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Real Estate Appraisers (Commerce) cont. Ms. Janeth Martin, Helena Qualifications (if required): public member	Governor	5/1/2003
Board of Realty Regulation (Commerce) Mr. John Beagle, Sidney Qualifications (if required): real estate broker	Governor	5/9/2003
Ms. Teddye Beebe, Libby Qualifications (if required): public member	Governor	5/9/2003
District Court Council (Supreme Court) Judge Edward P. McLean, Missoula Qualifications (if required): none specified	elected	6/30/2003
Ms. Lori Maloney, Butte Qualifications (if required): nonvoting member	Supreme Court	6/30/2003
Electronic Government Advisory Council (Administration) Mr. David A. Galt, Helena Qualifications (if required): state agency representative	Governor	6/18/2003
Sen. Duane Grimes, Clancy Qualifications (if required): representing the Senate	Senate President	6/18/2003
Rep. Karl A. Waitschies, Peerless Qualifications (if required): not listed	House Speaker	6/18/2003
Mr. M. Jeff Hagener, Helena Qualifications (if required): state agency representative	Governor	6/18/2003
Mr. James E. Reno, Billings Qualifications (if required): local government official	Governor	6/18/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Electronic Government Advisory Council (Administration) cont. Mr. Greg Gianforte, Bozeman Qualifications (if required): public member	Governor	6/18/2003
Mr. Gene Vuckovich, Anaconda Qualifications (if required): public member	Governor	6/18/2003
Flathead Basin Commission (Governor) Ms. Marilyn Wood, Bigfork Qualifications (if required): public member	Governor	6/30/2003
Mr. Paul Smiley, Kalispell Qualifications (if required): public member	Governor	6/30/2003
Mr. Gary Wicks, Polson Qualifications (if required): public member	Governor	6/30/2003
Governor's Council on Families (Public Health and Human Services) Mr. Peyton Terry, Glasgow Qualifications (if required): public member	Governor	4/24/2003
Sen. Dale Mahlum, Missoula Qualifications (if required): legislator	Governor	4/24/2003
Ms. Kathleen Jensen, Westby Qualifications (if required): public member	Governor	4/24/2003
Mr. John Vincent, Gallatin Gateway Qualifications (if required): public member	Governor	4/24/2003
Rev. Peter Bruno, Terry Qualifications (if required): public member	Governor	4/24/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Families (Public Health and Human Services) cont. Mr. Stanley Rathman, Choteau Qualifications (if required): public member	Governor	4/24/2003
Mr. Bill Pena, Seeley Lake Qualifications (if required): public member	Governor	4/24/2003
Ms. Kim Visser, Missoula Qualifications (if required): public member	Governor	4/24/2003
Ms. Kathleen Heiser, Billings Qualifications (if required): public member	Governor	4/24/2003
Mr. Tom Burnett, Bozeman Qualifications (if required): public member	Governor	4/24/2003
Ms. Crystal LaPlant, Browning Qualifications (if required): public member	Governor	4/24/2003
Ms. Floral Goodman, Laurel Qualifications (if required): public member	Governor	4/24/2003
Ms. Melissa Sundberg, Victor Qualifications (if required): public member	Governor	4/24/2003
Ms. Julie Lovell, Big Timber Qualifications (if required): public member	Governor	4/24/2003
Ms. Arlene Nicholuson Diehl, East Helena Qualifications (if required): public member	Governor	4/24/2003
Ms. Lilly Motl, Helena Qualifications (if required): youth representative	Governor	4/24/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Families (Public Health and Human Services) cont. Ms. Kristen Blystone, Great Falls Qualifications (if required): youth representative	Governor	4/24/2003
Helena College of Technology of the U of M Executive Board (University System) Mr. Rick Hays, Helena Qualifications (if required): public member	Governor	4/15/2003
Judicial Standards Commission (Justice) Judge Edward P. McLean, Missoula Qualifications (if required): none specified	Chief Justice	6/30/2003
Microbusiness Advisory Council (Commerce) Mr. Richard C. King, Havre Qualifications (if required): representing experts in revolving loan funds administration	Governor	6/30/2003
Mr. Duane Kurokawa, Wolf Point Qualifications (if required): representing the banking industry and Congressional District 2	Governor	6/30/2003
Mr. Stephen Mehring, Great Falls Qualifications (if required): representing revolving loan funds and Congressional District 2	Governor	6/30/2003
Ms. Billie Lee, Ronan Qualifications (if required): representing small cities and Congressional District 1	Governor	6/30/2003
Ms. Candace Eide, Glendive Qualifications (if required): representing low income populations and Congressional District 2	Governor	6/30/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Microbusiness Advisory Council (Commerce) cont. Ms. Karyn Brown, Plevna Qualifications (if required): representing microbusiness owners and cities under 15,000	Governor	6/30/2003
Mr. Dan Manning, Somers Qualifications (if required): representative for Congressional District 1	Governor	6/30/2003
Montana Agricultural Heritage Commission (Agriculture) Mr. Dennis L. DeVries, Polson Qualifications (if required): member of a conservation district board of supervisors	Governor	6/30/2003
Mr. Jack Dietrich, Billings Qualifications (if required): representative of a regional or statewide land trust	Governor	6/30/2003
Mr. Chris King, Winnett Qualifications (if required): rancher active in a regional or local agricultural organization	Governor	6/30/2003
Mr. Ken Maki, Great Falls Qualifications (if required): rancher active in a state agricultural organization	Governor	6/30/2003
Mr. Randy Smith, Glen Qualifications (if required): rancher active in a regional or local agricultural organization	Governor	6/30/2003
Mr. Thornton A. Liechty, Evaro Qualifications (if required): forest landowner	Governor	6/30/2003
Mr. Steve Luebeck, Butte Qualifications (if required): representative of a regional or statewide conservation organization	Governor	6/30/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Agricultural Heritage Commission (Agriculture) cont. Mr. Art Neill, Whitehall Qualifications (if required): representative of a regional or statewide conservation organization	Governor	6/30/2003
Montana Consensus Council (Governor) Ms. Jane Jelinski, Bozeman Qualifications (if required): public member	Governor	6/30/2003
Sen. Bob Keenan, Bigfork Qualifications (if required): public member	Governor	6/30/2003
Lt. Governor Karl Ohs, Harrison Qualifications (if required): ex-officio member	Governor	6/30/2003
Ms. Peggy Trenk, Helena Qualifications (if required): public member	Governor	6/30/2003
Ms. Anne Hedges, Helena Qualifications (if required): public member	Governor	6/30/2003
Mr. Jon Sesso, Butte Qualifications (if required): public member	Governor	6/30/2003
Rep. Monica J. Lindeen, Huntley Qualifications (if required): public member	Governor	6/30/2003
Mr. Alan Rollo, Great Falls Qualifications (if required): public member	Governor	6/30/2003
Dr. Nelson Wert, Townsend Qualifications (if required): public member	Governor	6/30/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Consensus Council (Governor) cont. Ms. Sarah Van de Wetering, Missoula Qualifications (if required): public member	Governor	6/30/2003
Ms. Mary Whittinghill, Helena Qualifications (if required): public member	Governor	6/30/2003
Mr. LeRoy Not Afraid, Crow Agency Qualifications (if required): public member and a Native American	Governor	6/30/2003
Mr. Brad Powell, Missoula Qualifications (if required): public member	Governor	6/30/2003
Montana Fetal Alcohol Syndrome Advisory Council (Public Health and Human Services) Mr. Thomas Price, Eureka Qualifications (if required): parent of two FAS affected children and is an outgoing member of DDPAC	Governor	6/13/2003
Ms. Carole Lankford, Pablo Qualifications (if required): Confederated Salish and Kootenai Tribal Council representative	Governor	6/13/2003
Ms. Mary Behrendt, Columbia Falls Qualifications (if required): high school instructor in Family and Consumer Science	Governor	6/13/2003
Ms. Kathy Boutilier, Helena Qualifications (if required): school nurse	Governor	6/13/2003
Ms. Rebecca Burt, Great Falls Qualifications (if required): therapeutic foster parent	Governor	6/13/2003
Ms. Leita Cook, Helena Qualifications (if required): specialist for FAS diagnosis	Governor	6/13/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Fetal Alcohol Syndrome Advisory Council (Public Health and Human Services) cont. Mr. Billford Curley, Sr., Lame Deer Qualifications (if required): Northern Cheyenne tribal representative	Governor	6/13/2003
Dr. Suzanne Dixon, Great Falls Qualifications (if required): behavioral developmental pediatrician	Governor	6/13/2003
Ms. Allison Failing, Poplar Qualifications (if required): Fort Peck Tribal Council representative	Governor	6/13/2003
Ms. Jacalyn Ironmaker, Box Elder Qualifications (if required): specialist in human services with concentration in chemical dependency	Governor	6/13/2003
Ms. Diane Jeanotte, Billings Qualifications (if required): participant in the Four State FAS Consortium	Governor	6/13/2003
Dr. John Johnson, Helena Qualifications (if required): director of medical genetics at Shodair Hospital	Governor	6/13/2003
Dr. Ted Laine, Missoula Qualifications (if required): pediatrician with a special interest in neonatology	Governor	6/13/2003
Ms. Irene Lake, St. Ignatius Qualifications (if required): site manager for the University of New Mexico Fetal Alcohol Prevention Program on the Flathead Reservation	Governor	6/13/2003
Mr. Mike Lande, Billings Qualifications (if required): officer of the Indian Health Board of Billings	Governor	6/13/2003
Ms. Crystal LaPlante, Browning Qualifications (if required): Blackfeet Nation Tribal Council representative	Governor	6/13/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Fetal Alcohol Syndrome Advisory Council (Public Health and Human Services) cont. Ms. Terry McAnally, Poplar Qualifications (if required): Fort Peck Tribal Council representative	Governor	6/13/2003
Ms. Myrna Medicine Horse, Crow Agency Qualifications (if required): Crow Tribal Council representative	Governor	6/13/2003
Ms. Jill Plummage, Harlem Qualifications (if required): Fort Belknap Agency Tribal Council representative	Governor	6/13/2003
Ms. Cindy Schamberg, Libby Qualifications (if required): executive director of Families in Partnership	Governor	6/13/2003
Ms. Sandy Sorrell, Pablo Qualifications (if required): Confederated Salish and Kootenai Tribal Council representative	Governor	6/13/2003
Ms. Linda Tarinelli, Bozeman Qualifications (if required): coordinator/director of the Young Parents Program in Bozeman	Governor	6/13/2003
Mr. Richard Williams, Bozeman Qualifications (if required): parent of an alcohol affected child	Governor	6/13/2003
Ms. Margaret Ann Yellow Kidney, Browning Qualifications (if required): representative of the Blackfeet Nation	Governor	6/13/2003
Montana Heritage Preservation and Development Commission (Historical Society) Mr. F. W. Howell, West Yellowstone Qualifications (if required): managing a facility catering to tourists	Governor	5/23/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Heritage Preservation and Development Commission Sen. Dale Mahlum, Missoula Qualifications (if required): none specified	(Historical Society) cont. Senate President	4/24/2003
Ms. Mary Oliver, Ennis Qualifications (if required): businessperson	Governor	5/23/2003
Montana Potato Advisory Committee (Agriculture) Mr. Bill Buyan, Sheridan Qualifications (if required): none specified	Director	5/20/2003
Mr. Art Mangels, Dillon Qualifications (if required): none specified	Director	5/20/2003
Montana State University Billings Executive Board (University System) Ms. Carolyn Ennis, Billings Qualifications (if required): public member	Governor	4/15/2003
Montana State University Executive Board (University System) Ms. Sue Leigland, Bozeman Qualifications (if required): public member	Governor	4/15/2003
Montana State University Great Falls College of Technology Executive Board (University System) Dr. Clay Gehring, Great Falls Qualifications (if required): public member	Governor	4/15/2003
Montana State University Northern Executive Board (University System) Ms. Judy Greenwood, Havre Qualifications (if required): public member	Governor	4/15/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana State Veterans Cemetery Advisory Council (Military Affairs) Mr. Mickey Nelson, Helena Qualifications (if required): technical expert	Director	5/1/2003
Ms. Alma Dickey, Helena Qualifications (if required): Disabled American Veterans Auxiliary	Director	5/1/2003
Ms. Alma Dickey, Helena Qualifications (if required): Prisoners of War	Director	5/1/2003
Mr. Fred Olson, Fort Harrison Qualifications (if required): Veterans of Foreign Wars	Director	5/1/2003
Ms. Rose Marie Storey, Helena Qualifications (if required): American Legion Auxiliary	Director	5/1/2003
Mr. George Paul, Helena Qualifications (if required): Military Order of the Cooties	Director	5/1/2003
Mr. Jim Heffernan, Helena Qualifications (if required): Marine Corps League	Director	5/1/2003
Mr. Raymond Read, Helena Qualifications (if required): American Legion	Director	5/1/2003
Mr. Raymond Read, Helena Qualifications (if required): Vietnam Veterans of America	Director	5/1/2003
Mr. M. Herbert Goodwin, Helena Qualifications (if required): First Special Service Force	Director	5/1/2003
Mr. Robert C. McKenna, Helena Qualifications (if required): technical expert	Director	5/1/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana State Veterans Cemetery Advisory Council (Military Affairs) cont. Mr. James F. Jacobsen, Helena Qualifications (if required): none specified	Director	5/1/2003
Mr. George Poston, Helena Qualifications (if required): Disabled American Veterans	Director	5/1/2003
Major John Walsh, Helena Qualifications (if required): Department of Military Affairs	Director	5/1/2003
Ms. Eve Longfellow, Helena Qualifications (if required): Veterans of Foreign Wars Auxiliary	Director	5/1/2003
Mr. William Hill, Helena Qualifications (if required): Military Order of the Purple Heart	Director	5/1/2003
Mr. Don Buffington, Conrad Qualifications (if required): 40 & 8	Director	5/1/2003
Montana Tech of the University of Montana Executive Board (University System) Ms. Carol Vega, Butte Qualifications (if required): public member	Governor	4/15/2003
Montana-Alberta Bilateral Advisory Council (Commerce) Sen. Glenn A. Roush, Cut Bank Qualifications (if required): representing the legislative branch	Governor	4/27/2003
Mr. David A. Galt, Helena Qualifications (if required): representing the executive branch	Governor	4/27/2003
Mr. Mark A. Simonich, Helena Qualifications (if required): representing the executive branch	Governor	4/27/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana-Alberta Bilateral Advisory Council (Commerce) cont. Mr. W. Ralph Peck, Helena Qualifications (if required): representing the executive branch	Governor	4/27/2003
Lt. Governor Karl Ohs, Harrison Qualifications (if required): representing the executive branch	Governor	4/27/2003
Mr. Mark Cole, Shelby Qualifications (if required): representing private citizens	Governor	4/27/2003
Sen. E.P. (Pete) Ekegren, Choteau Qualifications (if required): representing the legislative branch	Governor	4/27/2003
Rep. Edith J. Clark, Sweet Grass Qualifications (if required): representing the legislative branch	Governor	4/27/2003
Rep. Carol C. Juneau, Browning Qualifications (if required): representing the legislative branch	Governor	4/27/2003
Mr. Bob Davis, Townsend Qualifications (if required): representing private citizens	Governor	4/27/2003
Petroleum Tank Release Compensation Board (Environmental Quality) Ms. Mary Ann Sharon, Dillon Qualifications (if required): public member	Governor	6/30/2003
Mr. Tim Hornbacher, Helena Qualifications (if required): service station dealer	Governor	6/30/2003
Property Tax Reappraisal Advisory Council (Revenue) Sen. Emily Stonington, Bozeman Qualifications (if required): legislator	Governor	4/30/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Property Tax Reappraisal Advisory Council (Revenue) Rep. Robert R. Story, Jr., Park City Qualifications (if required): legislator	Governor	4/30/2003
Rep. Roger Somerville, Kalispell Qualifications (if required): legislator	Governor	4/30/2003
Rep. Gary Branae, Billings Qualifications (if required): legislator	Governor	4/30/2003
Mr. Kurt Alme, Helena Qualifications (if required): director of the Department of Revenue	Governor	4/30/2003
Ms. Susan Humble, Great Falls Qualifications (if required): representative of the business community	Governor	4/30/2003
Mr. Ward Ernst, Stanford Qualifications (if required): representative of the agriculture community	Governor	4/30/2003
Mr. Nick Hogan, Missoula Qualifications (if required): residential appraiser	Governor	4/30/2003
Public Employees' Retirement Board (Administration) Mr. Troy W. McGee, Helena Qualifications (if required): retired public employee	Governor	4/1/2003
Col. Robert Griffith, Helena Qualifications (if required): public member	Governor	4/1/2003
Reserved Water Rights Compact Commission (Natural Resources and Conservation) Mr. Gene Etchart, Glasgow Qualifications (if required): Governor's appointee	Governor	6/1/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Reserved Water Rights Compact Commission (Natural Resources and Conservation) cont. Mr. Jack Salmond, Choteau Qualifications (if required): Governor's appointee	Governor	6/1/2003
Rep. Robert Thoft, Stevensville Qualifications (if required): Governor's appointee	Governor	6/1/2003
Ms. Tara DePuy, Livingston Qualifications (if required): Governor's appointee	Governor	6/1/2003
State Compensation Insurance Fund Board of Directors (Administration) Mr. Tom Horn, Cohagen Qualifications (if required): private enterprise and a policy holder	Governor	4/28/2003
Ms. Lorretta Lynde, Helena Qualifications (if required): public member	Governor	4/28/2003
Ms. Wendy Susott, Missoula Qualifications (if required): representing private enterprise	Governor	4/28/2003
State Library Commission (Education) Ms. Rosemary Garvey, Butte Qualifications (if required): public member	Governor	5/22/2003
Mr. David Johnson, Billings Qualifications (if required): public member	Governor	5/22/2003
State Park Futures Committee II (Fish, Wildlife, and Parks) Sen. Jim Elliott, Trout Creek Qualifications (if required): public member	Governor	4/3/2003
Rep. Dave Kasten, Brockway Qualifications (if required): public member	Governor	4/3/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Park Futures Committee II (Fish, Wildlife, and Parks) cont. Sen. Bob Keenan, Bigfork Qualifications (if required): public member	Governor	4/3/2003
Mr. Ed Heinrich, Fairmont Qualifications (if required): public member	Governor	4/3/2003
Ms. Michele Reese, Whitefish Qualifications (if required): public member	Governor	4/3/2003
Rep. Christine Kaufmann, Helena Qualifications (if required): public member	Governor	4/3/2003
Rep. John Brueggeman, Polson Qualifications (if required): public member	Governor	4/3/2003
Mr. Mike Penfold, Billings Qualifications (if required): public member	Governor	4/3/2003
Ms. Margaret Moddison, Great Falls Qualifications (if required): public member	Governor	4/3/2003
State-Tribal Economic Development Commission (Governor) Mr. Tim Zimmerman, Billings Qualifications (if required): representing the Little Shell Tribe	Governor	6/30/2003
Mr. John Healy, Harlem Qualifications (if required): representing the Fort Belknap Tribe	Governor	6/30/2003
State-Tribal Economic Development Commission (Office of Indian Affairs) Mr. Lawrence Big Hair, Jr., Crow Agency Qualifications (if required): representative of the Crow Tribe	Governor	6/30/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
SummitNet Executive Council (Administration) Ms. Lois A. Menzies, Helena Qualifications (if required): state agency representative	Governor	6/30/2003
Mr. Scott Buswell, Helena Qualifications (if required): representative of the Office of Public Instruction	Governor	6/30/2003
Commissioner Janet Kelly, Miles City Qualifications (if required): local government representative	Governor	6/30/2003
Mr. Richard A. Crofts, Helena Qualifications (if required): Commissioner of Higher Education	Governor	6/30/2003
Ms. Karen Strege, Helena Qualifications (if required): state agency representative	Governor	6/30/2003
Mr. Dan Ellison, Helena Qualifications (if required): state agency representative	Governor	6/30/2003
Mr. Scott Darkenwald, Helena Qualifications (if required): representative of the Department of Administration	Governor	6/30/2003
University of Montana Executive Board (University System) Mr. Leonard Landa, Missoula Qualifications (if required): public member	Governor	4/15/2003
Western Montana College of the University of Montana (University System) Ms. Evelyn Ann Lohman, Dillon Qualifications (if required): public member	Governor	4/15/2003
Youth Justice Council (Justice) Mr. Dan Anderson, Helena Qualifications (if required): representing a public agency dealing with high risk youth	Governor	6/15/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont. Mr. Marko Lucich, Butte Qualifications (if required): representing the Juvenile Probation Association	Governor	6/15/2003
Rev. Steven Rice, Miles City Qualifications (if required): public member	Governor	6/15/2003
Mr. Spencer Sartorius, Helena Qualifications (if required): representing educational services	Governor	6/15/2003
Ms. Peggy Beltrone, Great Falls Qualifications (if required): representing local government officials	Governor	6/15/2003
Mr. Chuck Hunter, Helena Qualifications (if required): representing a public agency dealing with high risk youth	Governor	6/15/2003
Sen. Jeff Mangan, Great Falls Qualifications (if required): representing the legislature	Governor	6/15/2003
Mr. Steve Nelson, Bozeman Qualifications (if required): represents nonprofit organization dealing with delinquency prevention	Governor	6/15/2003
Mr. Ron Whitmoyer, East Helena Qualifications (if required): representing local school administration	Governor	6/15/2003
Ms. Misti Robertson, Billings Qualifications (if required): representing law enforcement	Governor	6/15/2003
Ms. Winnie Ore, Helena Qualifications (if required): representing Department of Corrections	Governor	6/15/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont. Ms. Shanna Bulik-Chism, Great Falls Qualifications (if required): representing a public agency dealing with detention services	Governor	6/15/2003
Ms. Katie Yother, Miles City Qualifications (if required): representing youth and those involved in juvenile justice system	Governor	6/15/2003
Mr. Brock Albin, Bozeman Qualifications (if required): representing defense of youth in the court system	Governor	6/15/2003
Ms. Sally Stansberry, Missoula Qualifications (if required): represents nonprofit organization dealing with delinquency prevention	Governor	6/15/2003
Ms. Carmen Hotvedt, Helena Qualifications (if required): representing youth and volunteers	Governor	6/15/2003
Mr. Marc Aune, Missoula Qualifications (if required): representing youth and those involved in the juvenile justice system	Governor	6/15/2003
Mr. Tracy King, Harlem Qualifications (if required): representing Native American programs	Governor	6/15/2003
Mr. Tony Wagner, Browning Qualifications (if required): representative of a nonprofit organization concerned with prevention	Governor	6/15/2003
Mr. Joe Johnson, Butte Qualifications (if required): youth representative	Governor	6/15/2003

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2003 through JUNE 30, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont. Mr. Don Munro, Browning Qualifications (if required): youth representative	Governor	6/15/2003
Ms. Beverley Boyd, Helena Qualifications (if required): representative of the Youth Court System	Governor	6/15/2003